

INTRODUCTION.

The Bomb Conspiracy case, otherwise known as the case of Emperor vs. Barindra Kumar Ghose and others, under Sections 121, 121A, and 122 of the Indian Penal Code, is certainly a unique and by far the most sensational trial in the History of British rule in India. The enquiry before the officiating District Magistrate of Alipore, L. Birley, Esq. took 76 days during which 253 witnesses were examined by the Crown ; the trial before the Additional Sessions Judge of Alipore Mr. C. P. Beachcroft, took 131 days and 206 witnesses were examined by the prosecution ; the appeal before the High Court was heard during 47 days and the Reference was heard by a third Judge of the same court for 20 days. The mass of documents put in, if counted individually and not by bundles, would come up to about four thousands and the material articles exhibited, e.g. bombs, revolvers, implements, moulds &c would count over a couple of hundreds. The trial passed through all the stages of procedure prescribed in the Criminal Procedure Code for the trial of a case and considering the herculean labour that all concerned in the case—whether as counsel for the Crown or counsel and pleaders for the defence—had to do, every one had the satisfaction of discharging his duty according to his lights. It is also a source of great gratification that throughout the protracted trial every endeavour was made by the Bench to maintain the highest traditions of the British Judiciary, its strict sense of justice, absolute impartiality and dealing even-handed justice regardless of consequences, in the midst of stirring times, eventful developments and repressive legislation. The Police also got credit for their work.

That there existed in Calcutta a secret society whose object was to overthrow the mighty British Government in India no body ever believed for a moment. It is beyond dispute that there was much discontent, much irritation, on account of the various measures of Government, and repressive legislation tending to curb the rights and privileges of the people. It is beyond the scope of the present Introduction to enter into a discussion relating to the contemporary history of India and more especially of the unfortunate provinces of the two Bengals. But there is no denying that the discontent was shared by the majority of the people whose loyalty and allegiance to the British Crown was beyond dispute. Everything was quiet; there was not even a dark cloud visible in the horizon when on the morning of the eventful and of May 1908, the people of Calcutta were roused from their sleep to learn with horror and dismay that simultaneous searches by the Police had taken place in as many as nine places in and around Calcutta and a large quantity of arms, ammunitions, bombs, a mass of documents &c. had been seized and numerous arrests taken place. There were dire suspense and gloomy misgivings and anxious apprehension as to further developments.

It seems that some of the higher officers of the Police had known of the existence of a secret society with headquarters at the garden at No. 32 Muraripukur Road, Manik-tola, in the suburbs of Calcutta, since January 1908. On the night of the 5th December 1907 the Naraingarh outrage took place, when attempts were made to blow up the Lieutenant Governor's train. Since then the Police were vigorously investigating the case and had got hold of an informer who gave information from time to time. They were looking out for Barindra Kumar Ghose when he was discovered on the 8th April 1908 coming out of the house of Hem Chandra

Das, 38-4 Raja Naba Krishen Street and going to the Garden. On the 11th April an attempt was made to kill the Mayor of Chandernagore by a bomb, which happily was unsuccessful. From after the 14th April arrangements were made to watch the Garden, No. 38-4 Raja Naba Krishen Street, No. 15 Gopi Mohon Dutt's Lane, No. 23 Scott's Lane, No. 48 Grey Street, and other places and various persons (some of them were afterwards arrested) were seen frequenting these places. On the 30th April a bomb, which was intended to kill Mr. Kingsford, the then District Judge of Muzaffarpur, was by mistake hurled at the carriage containing Mrs. and Miss. Kennedy and killed them. This forced the hands of the Police and on the 1st May, Inspector P. C. Biswas lodged a complaint and obtained search warrants to search various houses. A conference of Police Officers took place at the house of the Commissioner of Police at No. 2 Kyd Street and officers were deputed to these places and simultaneous searches took place at the houses before those in them or in other houses in their neighbourhood had stirred from their beds. The following were the places searched on the 2nd May and the articles and men seized and arrested there :—

(a) *No. 32 Muraripukur Road, Maviktola*,—Fourteen men were arrested here, of whom seven were acquitted by the Additional Sessions Judge, Alipur, and the rest convicted. Those who were acquitted were Naliny Kanta Gupta of Rungpūr, Hemendra Nath Ghose of Sagordari, Narendra Nath Buxi of Rajshaye, Purna Chandra Sen of Tamluk, Sachindra Kumer Sen of Sonarang, Bejoy Chandra Nag of Khulna, Kunja Lal Shaw of Kustia; and those convicted were Barndra Kumar Ghose of Khulna, Upendra Nath Banerjee of Chandernagore, Ullaskar Dutt of Brahmanberia, Indra Bhusan Rai of Khulna, Sishir Kumar Ghose of Jessore, Poresch Chandra Moulik of Jessore, Bibhut Churon Salar of Santipur. A vast

mass of documents and books and material articles amongst which were implements, bombs, detonators, moulds, fuses, revolvers, some buried underground some lying about, and formulae for explosives, routine of work &c. &c. were discovered. They were numbered 1—232, 387-465 and 1128 when marked as Exhibits by court. The place was then searched on three more occasions, namely, on 6th, 7th and 8th May. The things found were exhibited from 233-282.

(b) *No. 15 Gopi Mohon Dutt's Lane, Calcutta*,—Two men were arrested here—Kanai Lah Dutt of Serampur and Nirapado Roy of Santipur. Of these, Kanai was tried and hanged for the murder of the approver Narendra Nath Gossain in Alipur Jail on the 31st August 1908 and Nirapado was convicted in this case. A few documents and things were found there—which were exhibited as 373-386 and 710-716.

(c) *No. 43 Grey Street, Calcutta*,—Three arrests were made here—Arabinda Ghose, Abinash Chandra Bhattacharya and Sailendra Nath Bose of Arbelia. Arabinda was acquitted and the other two were convicted. A large quantity of documents were taken possession of and they were exhibited as 283-319, 1208 and 1209, the most important document being Ex. 295 commonly called "The Sweets letter," about the genuineness of the discovery of which the Sessions Judge had very great doubt. The letter ran thus :—

Bengal Camp, near Ajit's.
27th Dec. 1907.

DEAR BROTHER,

Now is the time Please try and make them meet for our Conference. We must have *swells* all over India ready made for emergencies. I wait here for your answer.

Yours affectionately,
Sd. Barindra Kumar Ghose,

(d) *No. 38-4 Raja Nabokissen Street*,—Hem Chandra Das was arrested here. He was convicted in this case. Letters, Exhibits 320-329 and articles Ex. 717-734 were found here. This place was again searched the next day and Exhibits 330-372 and 1132-1134 were found.

(e) *No. 134 Harrison Road*,—Five persons were arrested Nagendra Nath Gupta and Dharani Nath Gupta of Munshigunge, Asoke Chandra Nundy of Kalikaccha, Bejoy Ratna Sen Gupta of Burdwan and Moti Lal Bose of Narail. The first two were acquitted; the third was convicted, but died during the hearing of the appeal before the High Court and the remaining two were discharged by the Committing Magistrate. No suspicion was attached to this place by the Police before the 26th April when Ullaskar Dutt removed two tin boxes and a bag here from No. 15 Gopi Mohan Dutt's Lane which contained live bombs, moulds, detonators, picric acid, chemicals, chemical implements, documents and books. They were marked as Ex. 572-709 and 739, 740 by the court.

(f) *30-2 Harrison Road*,—None arrested. Letters were found which were marked Ex. 760-764 and 1262, 1263. The Prosecution case was that it was a sort of receiving Post Office of the conspirators.

(g) *No. 4 Harrison Road*,—The Prosecution case was that it was a shop called *Jugantar Pustokaloy* owned by Abinash and conducted by him and Sailendra. Nothing was found here as the shop had been removed 2-3 days before the search.

(h) *No. 23 Scott's Lane*—Arabinda Ghose lived here but removed to 48 Grey Street on the 28th April. Nothing was found on search here.

(i) *Shibpur Engineering College*,—The quarters of Babu Dwijadas Dutt Professor of the College, father of Ullaskar Dutt, were searched, but nothing was found.

In the meantime Mr. Birley, the then officiating District Magistrate of Alipur, having heard of the arrests, wanted to try the case himself and wrote to the Commissioner of Police, Calcutta, on the 3rd May, a letter, which was brought on the record on the 19th May, asking the latter to send the persons arrested to him for enquiry. Those arrested at the garden were sent to him on the 4th May when he recorded the confessions of Barindra, Ullaskar, Upendra, Indra Bhusan, and Bibhuty; on the 5th he further recorded the statements of Narendra Buxi and Narendra Gossamy. On the same day the cases of those who were arrested in Calcutta were transferred to Alipur by the Chief Presidency Magistrate on a petition by the Police.

The following is a list of further arrests and searches and the course of subsequent proceedings :—

11th May—Sudhir Coomar Sirkar of Khulna and Hrishikesh Kanjilal of Chatra; Serampur, had been brought down arrested after their houses were searched. They made confessions and they were remanded to *hajut* till the 18th May.

15th May—Birendra Nath Ghose of Sagordari brought down in custody. His statement was recorded and he was sent to *hajut*.

16th May—Krishna Jiban Sannyal (who was arrested at Malda on the 12th and whose house was searched) brought down to Calcutta. His statement was recorded and he was sent to *hajut*.

17th May—The authority under Sec. 196 Cr. P. Code for the prosecution of these men was given by the Local Government.

18th May—The enquiry began before Mr. Birley. Messrs. E. Norton, and Barton assisted by Mr. Upton and subsequently by Mr. Withal of the firm of Orr

Dignam & Co. appeared for the Prosecution ; Babus Bejoy Krishna Bose, Sarat Chundra Sen assisted by a number of pleaders and muktears appeared for the defence. An objection was taken by Babu Bejoy Krishna Bose to the jurisdiction of the Magistrate who recorded the confessions himself and took cognizance of the case without any sanction, but it was overruled.

19th May—A search took place at 4 Raja's Lane where one Taranath Roy Chowdhury used to live. Some letters—Ex. 1071-1081 and a box of arms and ammunition Ex. 1447 were found in a room in the house. The same evening three brothers Hem Chundra Sen, Birendra Chundra Sen and Sushil Chundra Sen of Sylhet, who were arrested on the 15th May, were brought down to Calcutta in custody. Sushil was put upon his trial along with others from the 20th and the others, against whom authority was subsequently obtained from Government to prosecute, from the 6th June.

26th May—A search took place at Seal's Lodge, Baidyanath. The case for the prosecution was that the conspirators had lived there in that secluded, out of the way house from January to March 1908 and perhaps made bombs. Some letters—Ex. 767-777 and some pieces of tin—Ex. 1127—were found in the house.

23rd June—Pardon was tendered to and accepted by Narendra Nath Goswamy, one of the accused persons and he became the approver and was examined. This man was subsequently murdered by revolver shots in the precincts of the Alipore Central Jail by accused Kanai Lal Dutt and Sateyendra Nath Bose, on the 31st August.

The evidence continued to be recorded till the 15th August, by Mr Birley who examined altogether 222 witnesses in this case, after which all the accused persons were committed to stand their trial in the Court of Sessions under Sections 121, 121A and 123 I. P. Code.

THE SECOND BATCH.

In the meantime, what was called the 2nd batch of Prisoners were formed by the arrest from time to time of persons who were produced before and remanded to *hajut* by Mr. Birley.

Debabrata Bose was arrested on 10th June at his house No. 55-3, Grey Street. He was afterwards acquitted by the Additional Sessions Judge, Alipore.

Charu Chundra Roy, Professor of Dupleix College, Chundernagore, was arrested on 22nd June. He moved the High Court as he was a French subject and on account of the illegality of the arrest. The Government withdrew the case against him.

Indra Nath Nundy and Nikhileswar Roy Moulik, (and 2 others who were discharged by Mr. Birley) were arrested on 23rd June at their houses 37, College Street and 64 Maniktola Street. Indranath was acquitted by the High Court and Nikhileswar by the learned Sessions Judge.

Bejoy Chunder Bhattacharya was arrested at his house in Ranee Sankari's Lane, Bhowanipore on 3rd July. He also was subsequently acquitted by the Sessions Judge.

Probhas Chundra Deb was arrested at 52, Machua Bazar Street on 16th July. He too was acquitted by the Sessions Judge.

Sateyendra Nath Bose of Midnapur was brought down in custody. He was tried for the murder of the approver and hanged.

Balkrishna Hari Kane was arrested on 20th July at Morris College, Nagpur. He hailed from Berar. He was acquitted subsequently on appeal by the High Court.

The evidence against them began to be recorded by the enquiring Magistrate, Mr. L. Birley, on 24th August 1908 and continued till the 11th September. 55 witnesses were altogether examined and all the accused persons were committed to take their trial before the Court of Sessions on the 14th September 1908 under Sections 121, 121A, 123 I. P. Code, excepting Jatindra Nath Bannerjea (*alias* Swami Niralambo) who was discharged.

Altogether 38 persons were committed, but out of these 2 were eliminated, *viz.* Kanai who was separately tried and hanged; and Charu Chandra Roy, the case against whom was withdrawn.

THE SESSIONS COURT.

The trial before the Court of Sessions at Alipur began jointly of both the batches on the 19th October 1908. It was presided over by Mr. C. P. Beachcroft, I.C.S. assisted by two Assessors, Babus Gurudas Bose and Kedar Nath Chatterjea. Messrs. B. Chakravarty and K. N. Chowdhury assisted by Babu Nirode Chundra Chatterjea appeared for Arabinda Ghose, but both Counsel had to leave the case on account of pressure of engagements at the High Court, and so Mr. C. R. Das came to the rescue and took the leading part in the defence. Messrs. P. Mittra, E. P. Ghose, S. Roy, J. N. Roy, R. C. Bonnerjee, R. N. Roy, Counsel and Babus Bejoy Krishna Bose, Sarat Chundra Sen, Nagendra Nath Banerjea, Tincouri

to give your opinions and for his Honour to pass judgment. I have, the unique honour and opportunity, Sir, of appearing before you in two of the longest trials over which you have presided here at Alipur—and I believe the longest in your Honour's experience as a Judge. In the other case—*King v. s. Habib and others*—all the accused persons were acquitted. I do not know, neither can I anticipate, what the result of this trial would be, but I have not the least doubt that justice will be done. The task of finding out the really relevant piece of evidence, from the vast mass of irrelevant evidence in this case, is indeed herculean. Ridiculed by a reptile press, looked on with suspicion by the prying Police, hampered in our work by the want of facilities for proper instructions—we have toiled on for months actuated by the highest and the noblest motives which inspire the profession—to help justice and vindicate innocence—cheered in our labours by the only redeeming feature in the case—the uniform courtesy we have received from the Bench. To think that all the 36 persons arraigned at the dock behind us, are guilty of a conspiracy to wage war is impossible. I have no doubt, Sir, that you will decide this case as an English Judge would do—for Justice is the bulwark of the State. British Rule in India is broad based upon the hearts and affections of the people, not because of its brave army or invincible navy—but on account of its strict and impartial administration of justice wherein lies its real strength. Long after the dust of controversy and racial feeling that has been raised over this case will be forgotten and history alone will remain to bear evidence to this strange episode—the one fact which people will never forget will be that there was a British Judge who kept himself cool and did justice for the sake of Justice.”

On the 14th April at 3 p.m. the two assessors gave their opinions. Babu Gurydas Bose found only the following

persons guilty under Sec. 122 I. P. C.—viz. Barindra, Ullaskat, Indu Bhasan, Upendra, Poresh, Bibhuty, Hem Das, and Hrishikesh, and Bahu Kedar Nath Chatterjea found all the above except Poresh guilty under Sec. 122 I. P. C. and also Sishir Ghose. The rest were found not guilty. They were also of opinion that there was no conspiracy to wage war. Mr. Beachcroft took time to consider his judgment and on the 6th May delivered a lengthy Judgment. Altogether he convicted 19 persons and acquitted 17. Those acquitted were :—Arabinda Ghose, Debabrata Bose, Nikhileswar Roy Moulik, Hemendra Ghose, Naliny Gupta, Sachindra Sen, Narendra Buxi, Bejoy Nag, Dharani Gupta, Nagendra Gupta, Purna Sen, Bejoy Bhattacharya, Birendra Ghose, Din Doyal Bose, Provas Deb, Kunjo Shaw, and Hem Sen.

THE HIGH COURT—APPEAL.

All the accused persons preferred appeals before the High Court—which came on for hearing before Chief Justice Sir Lawrence Jenkins and Mr. Justice Carnduff on the 9th August 1909 and heard from day to day till the 12th October. Messrs. C. R. Das and R. C. Bonerjea assisted by Babus Bejoy Krishna Bose, Narendra Nath Sett, Sarat Chunder Sen, Nagendra Nath Banerjea and Jatindra Nath Sen appeared for all the appellants, except Indra Nundy for whom Mr. B. Chakrabarty with Babu Dasarathi Sanyal and Monmatha Nath Mukerjee appeared; while the Crown was represented by Messrs. E. Norton, H. Stokes assisted by Babu Atulya Charan Bose and Messrs. Orr Dignam & Co. Mr. Das took five days to argue the points of law raised and another 13 days to argue on the facts. One of the appellants Asok Nundy having died, there remained 18 appellants before their Lordships. On 23rd November their

Lordships delivered separate judgments. With regard to one appellant, B. H. Kane, their Lordships were unanimous and he was acquitted; while with regard to 12 others their Lordships were unanimous, in holding that they were guilty under Section 121A. I. P. C. and their convictions were upheld though the sentences were reduced. With regard to five others viz, Sailendra Bose Krishna Jibon Sannyal, Biren Sen, Sushil Sen and Indra Nundy, his Lordship the Chief Justice was for acquittal, while Mr. Justice Carnduff was for upholding their convictions under Section 121 A though he reduced their sentences. On account of this difference of opinion, the case as against these five persons was referred to a third Judge, Mr. Justice Harrington.

THE REFERENCE—HIGH COURT.

The Reference came on for hearing on the 3rd January 1910. Babu Bejoy Krishna Bose appeared for Sailendra and Krishna Jiban, and opened the case; Babu Nagendra Nath Banerjee appeared for the two Sen brothers, and Mr. B. Chukraborty with Babu Dasarathi Sannyal for Indra Nundy. The Crown this time was represented by the new Advocate General from England, Mr. Kenrick assisted by Mr. H. Stokes and Babu Atulya Charan Bose. The hearing occupied 20 days, after which Mr Justice Harrington delivered his judgment acquitting 3 appellants Krishna Jibon, Sushil and Indra Nundy agreeing with the learned Chief Justice, while disagreeing with him but agreeing with Mr. Justice Carnduff upheld the convictions of Birendra Sen and Sailendra Bose.

Thus at last the curtain was dropped over this protracted trial which was kept pending from May 1908 to February 1910. The enormous expenses incurred by the Government in pro-

secuting these accused persons came up to several *lakhs* and everybody breathed a sigh of relief when the trial was over. The Judgments which are printed in this book will amply repay perusal and it is to be hoped, considering that the arguments are not reported as yet in the authorised law reports and journals, that the points of law raised by Mr. C. R. Das and argued with the greatest skill and ability may be published for the information and knowledge of the members of the legal profession.

28 HAZA LANE, KALIGHAT.

24th May, 1910.

BEJOY KRISHNA BOSE,

Vakil, High Court.

ALIPORE BOMB CASE.

FULL TEXT OF THE JUDGMENT.

SECRET SOCIETY AND POLICE WATCH.

The accused are charged under Sections 121, 121, A., 122, 123 I. P. Code. The facts of the case are as follows : In October, 1907, informations came to the police of the existence of a Secret Society. This was reported to the Director of Criminal Intelligence, India. It does not appear that anything further was ascertained till early in December an attempt was made to wreck the Lieutenant-Governor's train at Naraingath on the Bengal Nagpur Railway. Special Officers were deputed to investigate and some information was obtained at the end of January or beginning of February, 1908, in connection with the Secret Society. As a result, certain places in Calcutta were watched and a look-out was kept for the first accused, Barindra Kumar Ghose. One of the places watched was No. 32, Muraripukur Road, in the Suburbs of Calcutta. This place, which is spoken of as the garden throughout the evidence in this case, consists of a rather large piece of ground with a small building in the centre. As is so often the case in this country the term is a misnomer, for, if there ever was a garden properly so called, it has been allowed to run wild and a good deal of jungle has sprung up. It is surrounded on three sides by other gardens and on the fourth side there is a large field. No. 32 is not on the main Muraripukur Road, but is reached from it by a narrow lane which terminated at the entrance to the garden, where it reaches two masonry pillars standing on either side of the entrance.

In the middle of March, a number of men were seen in this garden and, shortly after, more police officers were placed on special duty to watch suspected persons. Early in April, the accused Barindra was followed from a house, No. 38-4, Raja Naba Krishna's Street, in which the accused Hem Chandra Das was living, to the garden and two days later viz. on 10th April, Barindra and two other men were followed from the garden to No. 38-4, and thence to Howrah and to Mankundu by train. Mankundu is the next station to Chandernagore. The three men walked to Chandernagore followed by the police, who eventually lost sight of all of them, one, who is said to have been Barindra, being followed to the house of one Hari Neogi there, from which he was not again seen to come out. On the night of the 11th an attempt with a bomb was made on the life of the Mayor of Chandernagore, the reason suggested being that shortly before, he had prohibited the holding of a political meeting in Chandernagore—a meeting which attempted to assemble but was dispersed.

On the morning of the 11th two of the three men were followed to a house in Serampur, one of the two being Narendra Nath Gosain, who was later arrested in connection with this case, offered a pardon, made King's evidence and finally murdered in the Alipur jail.

On the 20th April, two men who were followed from the garden to Circular Road were seen to meet two men there, who were taken to be Madrasis. The two latter were subsequently followed to a house No. 15, Gopi Mohan Datt's Lane, which, the evidence shows, had been hired on the previous day by one of the accused, Nirapada.

On the 21st April, two men were seen to take a cart to No. 38-4, Raja Naba Krishna's Street. It was there loaded with various things, among other things some tin boxes, and then driven to No. 15, Gopi Mohan Dutt's Lane, where it was unloaded.

A watch was then set on No. 15 and to facilitate the watch, the police hired a room in a house almost exactly opposite to No. 15.

On the 26th April, a hackney carriage was brought to No. 15, loaded there with two tin boxes and driven to No. 134, Harrison Road where it was unloaded. One of the accused, Ullaskar, is said to have been in the hackney-carriage with a canvas bag, similar to the one brought from No. 38-4, while another of the accused was on the dickey box.

Besides these main incidents there is a considerable amount of evidence as to the movements of various persons some identified, some not, between the places already mentioned and 23, Scott's Lane, 4, Harrison Road, 30-2, Harrison Road, and 46, Grey Street. This evidence will be more fully referred to later.

On the evening of the 30th April, 1908, a bomb supposed to have been intended for Mr. Kingsford, the District Judge of Mozafferpur, was thrown at a carriage just outside Mr. Kingsford's gate, and the explosion killed Mrs. and Miss. Kennedy who were in the carriage.

SEARCHES AND ARRESTS.

On the night of the 1st May, arrangements were made to search various places in Calcutta and the searches were carried out about dawn on the 2nd May. The places searched were the garden, 15, Gopi Mohan Dutt's Lane, 38-4, Raja Naba Krishna's Street, Nos. 4, 30-2 and 134, Harrison Road and 46, Grey Street.

At the garden the first 14 accused were found and arrested, 13 being caught in the verandah and one, Upendra Nath Banerji, as he emerged from the small room in the building. The building consists of a large room or hall, a small room at one end of this large room, a verandah in front shown in Ex. 51, where the 13 accused were arrested, and a verandah at the back running along one side of the building. The photograph of the building, put in evidence, gives rather a false impression making the building seem larger than it actually is.

In these premises were found three shells. Two, exhibits 437 and 440 were supposed to be loaded, but it was subsequently found that the contents were the constituents of the moulds on which

which was found mixed with the earth in these exhibits, being that it was castor oil. Major Black, Chemical Examiner to the Government of Bengal, says with regard to Ex. 713715 that taken together they suggest shell manufacture, being like the *debris* that would be left if the manufacture was interrupted or the plant removed.

At 38-4, Raja Naba Krishna's Street were found among other things some glass cylinders and tools; in the room occupied by a maid-servant were also found an empty revolver cartridge tin, an empty gunpowder tin, similar to tins found in the Murari-pukur garden and some shot. In cross-examination it was suggested that the latter were used for cleaning pens. All the above mentioned things were taken away on the 3rd May, though Superintendent Merriman, who conducted the search, stated that he had seen them on the previous day, he did not then consider them important, but under instructions brought them away the next day.

The search of 134, Harrison Road brought to light no less than 7 bombs. One of these, Ex 610, contained about a pound of picric acid and was loaded further with 24 spikes, 2 inch or more in length, and pointed at both ends. Major Smallwood speaks of the danger zone of this bomb being about 70 yards and suggests that it would be used for street fighting. Another of the bombs was the brass knot of a bedstead, another the tin reservoir of a lamp; both were filled with picric acid. Another bomb in a copper case was partly unloaded by Majors Smallwood and Black and kept for some time, but the picric acid acting on the copper had formed copper picrate and the bomb had to be destroyed as dangerous; Ex. 36 is a photograph of this bomb. In addition to the 7 shells mentioned 4 empty cistern ball cocks, which could be used for bombs, were found in the same boxes with the other things. There were also found a number of dynamite cartridges, coils of fuse, detonators, picric acid, mercury various Chemicals useful for making bombs, retorts, test tubes,

weights and scales, in short, a complete installation for the manufacture of explosives; also revolver cartridges and gunpowder, and various books and papers including an Elementary Treatise on Artillery, a moulder's text book and a page from the "Illustrated London News" of 9th June 1906, which gives illustrations of various bombs in connection with the attempt on the life of the King and Queen of Spain.

At the other places searched no explosives were found, only papers and books which it is unnecessary to specify at present.

The 2nd May was a Saturday. On the morning of the 4th May the accused arrested in the garden were placed before the District Magistrate and five of them made confessions. On the 5th statements were made by Narendra Nath Bakshi, who was arrested in the garden, there not having been time to take his statements on the 4th, and Narendra Nath Gossain, who had in the meantime been arrested at Serampur. From time to time other accused were arrested and four of them made statements. Of the various statements made some were retracted when the Magistrate examined the accused prior to the commitment, the other accused who had made statements to the Magistrate refused to say anything when examined, but all the statements were formally withdrawn on the opening day of the trial.

INQUIRY BY DISTRICT MAGISTRATE.

The Magistrate took up the enquiry on the 19th May. The enquiry continued till the 19th August when 30 out of the 34 accused were committed to this Court. The Magistrate did not at first commit the accused Barindra Kumar Ghose for trial with the other accused, but committed him on a separate charge for abetment of murder. Subsequently in consequence of an order passed by the High Court he committed him on the same charges as the rest. During the enquiry ten other persons were from time to time arrested. They formed what is spoken of as the second batch. Of these 10 seven were committed for trial. The enquiry against one of the

10, Satyendra Nath Bose, was not proceeded with, as during the course of the enquiry he was tried and sentenced along with Kanai Lall Dutt, who had been committed for trial in the first batch of accused, for the murder of the approver, Narendra Nath Gossain, in jail. These two men were subsequently executed. Of the seven men committed for trial in the second batch, one, Charu Chandra Roy, claimed to be a French subject. The charge against him was withdrawn under orders of Government and he was acquitted under Sec. 494 C. P. C. There are thus 36 accused before me. The hearing of the case began on the 19th October and the evidence was not concluded till the 4th March. At the opening of the case, a number of technical objections were taken by the various defence counsel. These were all dealt with in orders that appear either in the order sheet or on the petitions themselves.

THE EXHIBITS.

To prevent confusion I have adhered to the Exhibit numbers adopted by the Magistrate. The exhibits therefore have not been numbered consecutively as some exhibits put in, in the Magistrate's court, have not been put in here. The Magistrate began by marking such exhibits as search lists, confessions, reports of speeches, etc. with Arabic numbers and articles and documents found at searches with Roman numerals. When the latter list has reached No. CLXXXIX he found this method of marking too cumbrous and adopted Arabic numerals for the findings of searches also and, as I said before to avoid confusion I have adhered to this method.

WHAT PROSECUTION SEEKS TO ESTABLISH.

The prosecution seeks to establish association of the accused for the purposes of a conspiracy to wage war against the King, at the various places, which I have already mentioned, as well as at other places, to prove the connection of the accused with one another and with the conspiracy by letters and documents

found at searches of these places or the houses of the accused, and it also seeks to show that for the purposes of disseminating revolutionary ideas among the people of India missionaries were sent out to preach and newspapers started. The particular newspapers referred to are the "Jugantar," the "Sandhya," the "Nava-sakti" and the "Bande Mataram." It is further sought to establish the fact that a company was started, called the "Chatra Bhandar", Limited, which, under the guise of a general trading company, devoted itself chiefly to the circulation of seditious literature in which it was assisted by various agencies in different parts of the country.

DETAILS OF POLICE SHADOWING.

For the purpose of showing the association of places, it will be as well to set out here certain specific instances of cases where the accused and others were followed by the police officers who were shadowing them.

On 8th April the accused Barin was seen to go from No. 38-4, Raja Naba Krishna's Street to the garden.

On the 10th April Barin and two others were seen to go from No. 38-4 to Howrah Station and thence by train to Mankundu and on foot to Chandernagore.

On the 12th April, in the evening, Barin and Abinash were seen on Scaldah platform, thence they went to No. 23, Scott's Lane, where they were again seen with Sailendra and that same night Barin was followed to the garden.

On that or one of the two following days, Abinash and Sailendra were seen going in the direction of No 23.

On the 16th April, and again on the 17th, Hem Chandra Dass was followed from No 38-4 to No. 78, Russa Road.

On the 18th April, Barin and three others were followed from the garden to No. 41, Harrison Road, which was the *Jugantar* bookshop. There they were joined by two others and all six went to No 23, Scott's Lane, and subsequently, Barin and Abinash went from No. 21 to the garden.

On the 20th April, Upendra, Nirapada and Krishna Jiban were followed from the garden. At the 'canal, Krishna Jiban left the other two, who went on and met two persons, who were taken for Madrassis. After some conversation, Upendra and Nirapada went to No. 4, Harrison Road, while the other two men went to No. 15.

On the 21st April occurred the removal of certain boxes and other things from No. 38-4, to No. 15 to which I have already referred. One of the two men who came with the cart to No. 38-4 was subsequently followed to 59, Paddapukar Road, then to 30-2, Harrison Road, then to No. 44-2 or 44-3, Harrison Road and thence to within a short distance of the garden.

On the same day, Nirapada and another were followed from the garden to the shop of D. Waldie and Co, where one of them procured a large jar of colourless liquid, like Ex 435, which is a jar of Sulphuric acid. Then they went to a shop in Old China Bazaar Street where they got two large enamelled bowls, like Ex. 391; then they went to Ghose's Pharmacy where the second man got something and the two returned to the garden.

On the 22nd April, 2 Madrassis were seen to leave the garden, go to the bazar and purchase bazar articles and return to the garden.

On the 23rd April, Barin was seen going from the garden to No. 15 and a number of other accused were also seen to enter No. 15 where they stayed till a late hour.

On the same day, Hem Chandra Dass is said to have gone from 38-4 to No. 15 and back.

On the 24th April Barin was seen to go from No. 15 to No. 23, Scott's Lane and again the same day, from No. 15 to the garden. The same day a Madrassi was seen to come from No. 15, buy some tin, resin, castor oil and two earthen vessels and return to No. 15.

On the 25th April, several persons were seen going backwards and forwards between No. 15 and the garden. Barin was also

seen to go from No. 15 to No 48 Grey Street and then to No. 38-4. Upendra who was seen talking to Barin at No. 48 was seen to go to the garden.

On the 26th April Upendra and Nirapada were followed from No. 15 to 48, Grey Street and on the same day took place the removal, which I have already mentioned, from No. 15 to No. 34, Harrison Road of the boxes subsequently found to contain explosives.

On the 27th April Ullaskar was followed from No. 184, to Sibpur where his father is a professor at the College. On the same day Hem Chundra Das was seen to leave No. 15 with one of the so-called Madrasis, who had previously been seen there. They were followed to the Bengal Nagpur Railway office in Harrison Road and thence to Howrah Station. Hem Chandra Dass was not seen there but the other man took a train and two detectives went by the same train as far as Sini, whence they returned.

On the 28th April, Paresh was seen to go to No. 15, where on his calling out for Nirmal the door was opened for him by Nirapada. From No. 15, Paresh was seen to go to the *Empire* office where he got a copy of the paper, and thence to No 48, Grey Street.

Besides these specific instances there is general evidence of the shadowing witnesses as to their having seen the various accused at the above mentioned places, mostly at the garden and No. 15, 4 and 23 and a lesser extent at No. 38-4 and 48.

EVIDENCE OF SHADOWING WITNESSES DISCUSSED.

It will be as well to deal at this point with some suggestions that have been made about the shadowing work done by the police. It is not suggested that no such work was done at all, but it is argued that much of the evidence about it is false. I shall here deal with the suggestion which are of a general nature leaving the identification of specific individuals to be discussed when I consider the case as against each.

Mr. Dass argues that the witness Satis Chandra Banerji speaks vaguely of an incident at No. 23, Scott's Lane of the 25th March. He argues that Sashi Bhusan De says that Satis joined his staff in the beginning of April, and from Sashi Bhusan's evidence taken with that of Purna Chandra Biswas, he argues that Sashi made all arrangements for watching previous to the 14th April, Purna Chandra making the arrangements after that and consequently Satis's statement that he saw an incident at No. 23 on the 25th March must be false.

This result is arrived at by picking out few sentences out of a very lengthy examination. In the first place Purna Biswas says he was deputed on the 8th March to assist Sashi Bhusan De. He was joined by various officers whom he deputed to watch certain individuals. Satis says he reported himself for special duty on the 24th March to Ram Sada Mukherji and was sent by him to Sashi Bhusan and Purna Biswas. There is no reason whatever why Satis should antedate the period when he was put on special duty. Sashi Bhusan, no doubt, says that Satis joined him in the beginning of April. Taking this to be correct, it does not follow that Satis's statement is false. Sashi Bhusan says that he did not take part in the investigation, his duty was to supply intelligence to the higher authorities as reported. Purna Biswas was directing the investigation. Sashi Bhusan was mainly a reporting channel till he went out of the case in the middle of April. It may well be that Satis did not come to the notice of Sashi Bhusan till the beginning of April. It may be that when Satis speaks of instructions from Sashi they may have been conveyed to him through Biswas. It may even be that Sashi Bhusan has made a mistake about the date. The evidence may suggest some confusion on account of the dual control of Sashi Bhusan ; but I gather that while Sashi Bhusan was in the case, he was in general control with the special purpose of reporting to the higher authorities, while Biswas was in general control of details. But from such confusion as may arise in the evidence from the arrangement there

is no reason for saying that Satis is giving false evidence when he speaks of an incident on the 25th March. It is also possible that confusion may arise from drawing a distinction between the expression "watching houses" and "watching persons" who live in the houses.

Then with reference to the evidence of Suresh Ghose, who states generally that he saw several persons whom he identifies at No. 23, Mr. Dass argues that this must be false. The line of argument is this. The witness mentions one specific incident on a particular date. In regard to every other date he is asked if he can give details and says "no." Therefore he cannot have seen the other persons whom he mentions. The crucial question "then how do you say you recognised other persons there?" is not put. Mr. Dass suggests it ought to be put in re-examination, but the cross-examination has not raised the necessity for doing so, and judging from other instances of this method, I have no doubt that if it had been put, Mr. Dass would have objected. I should hardly have thought this argument worth referring to but that this cross-examination is typical of Mr. Dass' cross-examination throughout the case. Not once only but again and again, he would go round a point, approach it and then not put the really crucial question. In dealing with the document this was most noticeable. A witness would say he found a certain document in a bundle of letters. He would admit that it was not specifically described in the search list, that there was no mark on it to identify it with a particular item in the search list, that he had not initialled the letter at the time of the search. But the necessary question "then how do you remember the letter?" was almost always omitted. Now just as in the case of the shadowing witness remembering seeing a man at a particular place, so in the case of a letter there may be many ways in which a witness might remember it apart from the methods suggested. Memory is a curious thing, it is a common place that we often forget important things and remember trivial things, and in this case where suggestions of perjury, forgery and interpolation

documents have been made indiscriminately against the police, from the highest officer to the lowest, it was essential that a witness should be offered an opportunity of explaining a circumstance, if a charge of dishonesty was going to be based on that circumstance. And that opportunity, Mr. Dass has persistently refrained from offering the witnesses. To return to the shadowing witness, Mr. Dass admitted, that if no instances of dates had been given, he would have been in a very difficult position to defend his client, but then he went on to argue that it was impossible for the witnesses to have remembered the dates on which these incidents occurred and he argued that as there was a diary in which various reports had been noted, that would have shown the dates and as it had not been produced, it must be presumed, it would not have supported the prosecution. Now, during the progress of the case, an application was made by the defence to see the diary. I do not propose to again recapitulate my order on the point, it is sufficient to say here that the diary was produced for my inspection and that I inspected it as I promised I would do at the time.

On the next day, Mr. Dass argued, with reference to the general evidence of certain persons being seen at certain places, that the defence were not in a position to test the evidence and therefore the evidence must be discarded as unworthy of credit. The argument then comes to this,—when specific instances are given and specific dates the evidence must be disbelieved because the witness could not have remembered the dates, when specific instances and dates are not given the witness is equally to be disbelieved.

Now I won't for a moment deny that if a witness were to come a considerable time after a series of occurrences and say that he remembered the dates, I should require some good reason from him for his being in a position to remember the dates. But it must not be forgotten that these Police officers were engaged on special work of very important character, work such as might lead to

But speaking generally, I do not think the other shadowing witnesses, the members of the regular police, have deliberately perjured themselves when speaking either of particular incidents or of having seen certain persons in certain places. They may have made mistakes of identity, but that will be more fittingly discussed when dealing with the cases of individual accused, but there is no justification for the assumption that they have deliberately given false evidence merely because they belong to the police force.

The shadowing witnesses Suresh, Satis and Bolai and the driver of a hackney carriage, Alijan, clearly prove the removal of two trunks and bag from No. 15 to No. 134 Harrison Road on the 26th April. Steps were taken to see that the trunks were not removed from No. 134. We, therefore, have a connection established between the garden and No. 15 and between No. 15, and No. 134. And this connection does not depend merely on the oral evidence of the shadowing witnesses. For apart from the fact that explosives, materials for making explosives and ammunition were found both at the garden and at No. 134, and that *debris* suggesting shell manufacture were found at No. 15, a close connection is established by documents found at the three places. A small note book (Ex. 382.) was found at No. 15 and another small note book (Ex. 667) was found at No. 134. On the first page of both are 3 names and addresses; and on the second page two more names and addresses. These are the same in both books, occur in the same order and are in the same handwriting. Then in 667 are given proportions of metals for making hard brass and the necessary ingredients, with quantities of foundry sand. These are apparently for the purpose of making shells, moulds. Then come rules, with examples, for ascertaining the weight of a shell and the amount of powder which it will contain and a diagram; then the cost of crucibles, moulding boxes etc. After these are more names and addresses, four in number, and of those the first three occur in the same order in Ex. 382, which also contains what is apparently a formula for a fulminating mixture.

ASSOCIATION OF PLACES.

At the garden was found a note book, exhibit 239. In these there are 3 references to one H. D. In both Ex. 382 and 667 these initials are given with an address in the district of Midnapore and the adding is that of Hem Chandra Das, and this name appears in full in another book (Exhibit C) also found in the garden. Again in No. 239 is an entry. "Deodhar and—Athavale's address from S. C." The names of A. B. Deodhar and S. C. Athavale with address appear in both 382 and 667 immediately after the address of H. D. Finally in 239 there is an entry "Dr. Dhude to be kept in the garden." and in Ex. 382 we find the name B. R. Dhudhe. Again in both 239 and 667 we find numbered lists of initials, 16 sets initials in 239 and 14 in 667, and 10 sets of initials are common to both. In exhibit, 382 we also find two formulæ, CH.—P SA APP CH P. $12+6+1$ and $1+1$. We find exactly the same formulæ in Exhibit 231-2, another note book found in the garden. If these abbreviations stand for chlorate of potash, sulphide of antimony, amorphous phosphorous and phosphorous; both these formulæ are formulæ for explosive mixtures. This we got from the evidence of Major Black. Again a number of manuscript plans were found at both 134 Harrison Road and in the garden. Exhibit 640 found at No. 134 is apparently the plan of some place on the outskirts of the Gaur Forest, and shows the road leading to Malda. Exhibit X 2/14 found in the garden is a plan of exactly the same locality, identical in all respects, and the writing on the plan is in the same hand as that on 640. Exhibit X 2/7 found in the garden is a plan on a smaller scale, covering a much larger area, but including the same locality as the two above mentioned plans. A name appearing in the above maps is "Kausat," a village which is the home of one of the accused. In Exhibit X 214, another plan found in the garden this name appears and near it the words "our homes". Exhibit 641 is another plan found at No. 134 and in this appears the words "our house." The word "our" in this plan appears to have been written by the same hand

as the word "our" in Ex. X 214 the formulation of the "o" being distinctive, "o."

Again on the back of Ex. 642, a plan found at No. 134, are the words "Prokash Chandra Bose, Ghorias, Seal's Lodge, Raidie, P. O. Rohini, via Baidyanath, Deoghar." Ex. X 2/9 is a plan found in the garden. The names on it correspond with the above. In both plans there is a plan of apparently the same house : doors, tanks, rooms, steps up to a verandah and a bedstead being shown in the same position in both.

It is suggested that the above plans with others, were made for the purposes of carrying out dacoities, the object being to get funds for the revolutionary movement, and as a further point of similarity between No. 134 and the garden in this connection I may add that at both places false beards were found.

The connection between the garden, No. 15 and No. 134 being thus established, the question arises, with what object were these arms and ammunition collected and the explosives manufactured. We find the answer to this in Barin's confession.

BARIN'S CONFESSION DISCUSSED.

Mr. Bonnerji argues that as the confession has been retracted it is no evidence against Barin, and Mr. Dass argues that it can not in any case be evidence against other accused ; he also contends that it is inadmissible in evidence. On the latter point his argument is that as the confession was made on the 4th May and Mr. Birley had written to the Commissioner of Police on the previous day, to the effect that he would take up the case himself, therefore it was taken in the course of the enquiry and Section 164, C. P. C. is not applicable, and that Section 364 read with section 342 is not applicable, because at that time no evidence had been found which the accused could be called upon to explain. Assuming for the sake of argument that the enquiry was commenced on the 3rd May, the argument, if correct, leads us to this position that a confession cannot be recorded at any time between the time when the Magistrate says

the statement, and the same argument applies to the confession of Birendra Nath Ghose and Krisna Jiban Sanyal, which will be dealt with at the proper time.

It is also argued that the confession of Barin is not admissible in evidence as not being voluntarily made. Mr Birley, who is an experienced and careful Magistrate, has stated with regard to this confession, as well as the others, that he was satisfied that they were voluntary. He took every means possible to ascertain that they were. He warned the accused person in every case that the statement might be used as evidence against him, he puts questions to ascertain whether the accused were speaking voluntarily. No doubt it may be said that if an accused has been induced to make confession he will be instructed as to what answers to give to such questions. But the accused are not of the ordinary illiterate type of accused from whom confessions are often easily obtained. It is possible that some of the younger among the accused might be deceived, but natural effect of such questions by the Magistrate would be to put the older accused on their guard.

It is pointed out that when Barin wrote out a statement for the police he had been in custody from Saturday morning till Sunday night, when the statement was written. On the other hand we have the fact that immediately after his arrest he had pointed out to the police at the garden, spots in the garden where the incriminating articles were found buried, and when he had himself pointed out these things there is nothing extraordinary in his afterwards making a statement explaining the circumstances how they came to be there. And at the end of his statement he expressly asked the Magistrate to take down the reason for his disclosures. He says that his party was divided as to the propriety of making the disclosures, but he persuaded them to give statements to Inspector Ram Sadai Mukerji, the reason being that because the band was discovered it was best not to do more work in the country and to save the innocent, and this very statement shows that at any

to the case where he expects that he will get an advantage for some one else by confessing. A confession made simply from the desire to save the innocent is not inadmissible within the terms of Section 24. If made on an inducement, such a confession might be open to the criticism that it was not true, but it cannot be said to be inadmissible.

I do not, however, desire to base my decision on this technical ground, for I have no doubt whatever that the confession was quite voluntary. Made on the 4th May, it was not retracted till the trial began in this Court on the 19th October, inspite of the fact that in the Magistrate's Court he had legal advice and that on the 13th August the Magistrate expressly invited him to affirm or deny the confession.

ADMISSIBILITY OF OTHER CONFESSIONS.

As I have been discussing Section 24, I may here dispose of another argument of Mr Bonnerji, which was that other confessions were inadmissible because they had been made under Barin's inducement. Such an inducement does not, of course, come within the meaning of Section 24.

In his confession Barin speaks of having read up to the First Arts and then having gone to Baroda, where his brother Aurobindo was a professor in the Gackwar's College. He there studied History and Political Literature and at the end of a year, returned to Bengal to preach the cause of independence as a Political Missionary. He went from district to district and started gymnasia where young men were brought together to learn physical exercises and study politics. After two years of this work he was tired of it, and returned to Baroda for a year. Then he came back to Bengal convinced that purely political propaganda would not do, and that people must be trained spiritually to face dangers. He had an idea of starting a religious institution. The Swadeshi and Boycott agitation having then begun, he began to collect, as he says, 'this band which has

been arrested," and further he says that he collected 14 or 15 boys from the beginning of 1907 till now. This latter passage is relied on to show that the conspiracy is a very much smaller affair than the prosecution contends for, but 'as will be evident later on from the fact that many more persons are concerned, this statement was probably made so as not to give away his associates, and it is to be observed that, in addition to the persons arrested on the 2nd he named only three in his confession, Khudiram, Prafulla Chaki, and Narendra Gossain, and of these three Khudiram had been arrested at Muzafferpur and Prafulla had committed suicide, both of which facts he may have been aware; and with regard to Narendra, it is quite impossible that Barin had been told of the tracking of three men to Chandernagore by the police.'

Barin then goes on to say that with Abinash (an accused) and Bhupendra Nath Dutt, (who was convicted in a sedition prosecution) he started the *Yugantar* newspaper. This would be in March, 1906. After 1½ years, he again took to recruiting and educated his boys in religious books and politics. He says "we are always thinking of a far-off revolution and wished to be ready for it, so were collecting weapons in small quantities." Altogether he had collected 11 revolvers, 4 rifles and a gun.

Mr. Bonnerji takes advantage of these words "thinking of a far-off revolution" to argue that an intention to commit an offence at a distant date is not punishable under the law, and that Barin's meaning is that he realised that some day in the distant future there must be a revolution and he wished to be ready for it. That the latter contention cannot be sustained will be obvious on a perusal of the articles from the *Yugantar* which have been made exhibits, articles which show no suggestion of a possible revolution in the distant future, but which do suggest and urge their readers to acts of violence. Nor can the former argument be accepted as applicable to this case. A revolution, which is to be brought about by inciting the people of a vast continent to rise against

their rulers, which requires that people to be instilled with courage based on the inspiration of their sacred books and fired by the ceaseless repetition of calumny and falsehood, is not a matter of a moment, and it is no defence to a charge for conspiracy to wage war to say that the conspiracy could not effect its object in 20 years. The offence under Section 121 A is complete as soon as the conspiracy is formed.

Barin then goes on to say how Ullaskar Dutt and Hem Chandra Dass joined the party and made explosives, and then states that when press prosecution became numerous they began to think of using explosives and says, "wherever we went for money, we were encouraged to use explosives. Thinking that to be the voice of the nation, we submitted and began serious preparations" This suggests that many outside the small band of youths were, if not conspirators, at any rate, cognizant of a conspiracy.

Barin then tells of their attempts to wreck the train of the Lieutenant-Governor two of which were wholly unsuccessful, the third being very nearly successful. Then he tells of the attempt on the Mayor of Chandernagore and finally of the outrage at Mozafferpur. In speaking of the latter, he says, the people of the country demanded Mr. Kingsford's death.

He then states that 12 out of the 13 who were arrested with him at the garden, were there with others being instructed in religious and political books and says, the object was to teach them and send out as missionaries for this anarchical work," a sentence which has caused some comment, but which, taken with the rest of the confession, would appear to mean that they were to be sent out as missionaries presumably to spread Barin's doctrines and get recruits and also to be of use in the matter of explosives.

He refused to give the names of supporters, denied all connections with the attempts on the lives of Mr. Allen, Mr. Higginbotham and finally stated that they had discussed the idea of destroying

the Viceroy and the Commander-in-Chief, but the plans had taken no practical form. He then adds "we never believed that political murder will bring independence." This sentence has been much relied on as showing that the attempts on the Lieutenant-Governor and Mr. Kingsford were no part of a conspiracy to wage war. That point I shall discuss later. At present it is enough to say that the two sentences do not appear wholly consistent, the first suggesting that the idea was accepted but no plan perfected, the second that the idea was not approved of.

Now this confession is very fully corroborated. In regard to the starting of the *Yugantar* and Abinash's connection with it Abinash's pleader admits for him that from at least six months during 1907, Abinash was connected with the paper and there is plenty of proof of this, though he does not admit connection with it in the beginning. So far as regards Ullaskar, he himself in his confession admitted manufacturing explosives. It is true, that that confession was withdrawn, but as I shall show when dealing with his case it was a voluntary one. In fact, Mr. Bonnerji does not deny for Ullaskar, who has refused to answer any question himself, that he made explosives. His defence is that he joined the Society because it was a secret society and not for the object of waging war. Ullaskar was convicted at the High-Court Sessions under the Arms Act for being in unlawful possession of explosives intending to conceal them. Ullaskar's confession bears out Barin on the facts of the two unsuccessful attempts on the Lieutenant-Governor as well as with regard to the persons, who went on those expeditions. These attempts, it may be noted, were unknown to the police. Taking part as they did about six months before the arrest and being unsuccessful it is practically impossible that there should be independent corroboration of them, but Mr. Bonnerji who appears for the confessing accused who spoke about them, does not suggest that they never took place. Bibhuti Bhusan in his confession speaks of the second attempt. Hrishikesh speaks of one, apparently the first. Of the latter's state-

ment, though he does not speak of the actual attempt as he could not find Ullaskar whom he was to help, there is some corroboration in the evidence as to his going with Narendra Gossain in a hackney carriage from Serampur. It is possible that a rough plan in the book, Ex. 239, may have reference to one of these attempts. It shows where the Chatra Bridge Road meets which is apparently meant for a railway line, and there are two spots marked "St.", which might stand for two Stations. The connection of this plan with the attempts can, however, only be conjectured.

As to the third attempt on the Lieutenant-Governor, that at Kharagpur, there is plenty of corroborative evidence. There is the statement of Ullaskar, who said that he made the mine, and the fuse was of picric acid and chlorate of potash. There is the statement of Upendra Nath Banerji, who says that Barin told him on his return that he had laid the mine, leaving Bibhuti and Prafulla in charge, and that they had reported that it was successful, having heard a loud explosion. Bibhuti's statement is to the same effect. Barin stated that he placed the mine leaving Prafulla and Bibhuti in charge while he returned to Calcutta. This attempt was made on the night of the 5th December, and there is a singular piece of evidence, which corroborates the fact that Barin returned to Calcutta that night. It is in a letter found at Aurobindo's house, a letter which had not been examined by the police till after these confessions were made, and which was written by Aurobindo to his wife on the 6th December. He in explaining the delay in sending some brandy says "Abinash is not here, not is Sudhir, and Barin was not here," showing that Aurobindo had seen Barin in Calcutta, or at any rate was aware of his return to Calcutta on the 6th and that Barin had been away.

The method of laying the mine as given by Barin is corroborated by the finding on the spot of a piece of lead piping in which traces of picric acid were found and picric acid was found

on scrapings from the engine. This also corroborates Ullaskar's description. Barin's account is further corroborated by the finding of various things mentioned in his statement, near the scene of the explosion, such as cotton, wool, sal leaves, the cardboard box and pieces of newspaper. These things were produced at the Sessions trial at Midnapur when some coolies were prosecuted in respect of this occurrence, and Barin says he gives a detailed account of this occurrence because the coolies who were convicted were innocent.

Barin's statement in regard to the Chandernagore attempt on the Mayor is corroborated not merely by the confession of the accused Indu Bhusan, but by the evidence of the shadowing witnesses. They cannot, of course, speak to the actual attempt, but they speak as to the movements of the three men on the two days.

His account of the Muzafferpore outrage is corroborated as regards the identity of the individuals who went to murder Mr. Kingsford. He mentions the bomb being taken in a canvas bag. Such a bag was found at Muzafferpore and I may here mention that a similar bag was found at 131, Harrison Road, another at the search in Sylhet, and the three men who went to make the attempt on the Mayor are said to have carried a similar bag. There is nothing remarkable about any of these bags. I dare say they are common in the bazar, but their association with explosives in three cases and with formula for explosives in a fourth is significant.

We, of course, do not know the exact nature of the bomb used in Muzafferpore, beyond Barin's description of it. He says that Hem Chandra Dass and Ullaskar made it. Ullaskar himself denies that he had a hand in it. Barin's description of it, however, tallies with the description of the bomb thrown at the Mayor which failed to explode and which, he says, Hem Chandra made. That was in a tin case and though no wooden handle was found, there was a socket attached to the case into which a

handle could be fitted, and with regard to Hem Chandra Dass there is also corroboration in the statement of Ullaskar about his making explosives and of the shadowing witnesses in regard to Hem Chandra's movements and the fact that the expedition to Chandernagore started from his house.

THE CONSPIRACY—REPLY TO MR. BONNERJI.

When I have spoken of Barin's confession being corroborated by the confessions of other accused it must not be understood that I have over-estimated the value of one withdrawn confession as corroborating another withdrawn confession, but I may here say, generally speaking, that the confessing co-accused fully implicated themselves, and while we cannot of course get evidence of the inner workings of the society, the approver having been murdered, when evidence of attendant circumstances can be had it is forthcoming. In fact, all of Mr. Bonnerji's clients, who made confessions have refused to answer any questions. Of course, they were not bound to do so, but they were the best persons to explain the circumstances in which the confessions were made. Mr. Bonnerji on their behalf had not denied the truth of the confessions, he has argued that they were improperly induced. In fact in summing up the case for his clients while arguing that there was no conspiracy he has accepted the position that Barin, Ullaskar and Upendranath Banerji were the three principal persons in the society, whatever the object of the society may have been, and has argued that other persons going to the garden possibly did not know what was going on there.

Can it be supposed that the collection of arms and ammunition and the manufacturing of explosives was merely for the purpose of a few isolated assassinations? Mr. Bonnerji argues that it was considered that there was a grievance against the Lieutenant-Governor on account of the Partition and against Mr. Kingsford ordering Sushil to be whipped, that the action taken against these officials was purely personal and that these acts cannot be taken

Drill." The latter cannot be explained on the theory that drill is encouraged in Government schools, containing as it does notes on "rifle exercises, bayonet exercises, bayonet fighting, firing exercises, marching, and notes on explosives. Then there is a note-book, Ex. LXXXV, headed "Scraps for articles, Barindra Kumar Ghose, Baidya Nath, 26th Dec., 1906", which opens with the statement "Government during the last twenty years have allowed the annual death-rate of India to rise from 24 to 32 per 1,000", and contains notes on "elements which constitute the general efficiency of armies, according to J. S. Block," "army projectiles", the necessity for coolness in time of battle, "Command of law in the Boer country," "Rations served out by the Boer Government." "Extracts from the standing orders and instructions issued to the 6th Infantry Division by order of the Lieutenant-General Kelly-Kenny, causes of the Sepoy Mutiny," "orders by Lord Roberts in the South African Campaign," "Japanese soldiers' training"—Also Ex. LXXIX M. S. notes giving a description of the Railway line from Dum-Dum to Bogoola on the E. B. S. Ry., mentioning thick jungle, open country, culverts; and Ex. 231-2, notes which evidently refer to a long sketch of line on the Bengal Nagpur Railway. These last two exhibits may not refer to military operations, they might merely be intended for an attempt such as that on the Lieutenant-Governor's train at Kharagpur. Also Ex. LXXV., M. S. notes on the Russo-Japanese War, in connection with which I may note in passing that state in the papers produced in this case are constant references to the success of the Japanese. Finally there were 394 copies of the *Bartaman Rrnaniti*, a book in Bengali on 'the "Modern Art of War" containing a reference to the success of guerilla methods of warfare. This book is by the accused Abinash Chandra Bhattacharji, and for him it is argued that it is merely a series of interesting articles, in book form such as might be found in the pages of any English magazine. One answer to this argument is why are these 394 copies of the book in a place

where arms, ammunition and explosives are found secreted, in company with many other books on military subjects? Another answer is what is the meaning of the introductory chapter he added "war is the order of creation," in which there is a reference to India, followed immediately by a most compromising passage: "action is wanted; fame is the reward of action; but the price of fame is very high; fame cannot be obtained unless you offer all your bones and ribs by counting them like Dadhichi. (Dadhichi was a sage who offered his bones to the gods to make a thunder-bolt for killing Britraśura). In wandering about in the market of the world under the influence of opium, what did Kamala Kanta see in the shop, of fame? I saw deep darkness in the shop, nothing could be seen. I called the shop-keeper, but nobody responded. I heard only infinite roars striking horror in the heart of all—in faint light I read on the sign-board at the door—Shop of Fame, 'Things sold, eternal fame. Price, Life.' Then after a few lines is a reference to the Swadeshi movement. Later follows the statement:—"We, Indians, are disarmed under the orders of the King. The foreign King, being afraid of his life lest the subjects being driven mad with oppression should strike him on the head, has disarmed all the subjects of this country. However, the English employ the Sikhs, the Mahrattas, the Rajputs and the Talingis as soldiers, and, teach them a little of the military tact, but the intelligent Bengalis and the Brahmins of Poona are not even allowed to use a long stick. For who can say that the all-destroying force which may result from a combination of intelligence and strength of arms will not, in the twinkling of an eye, demolish the British kingdom? Then there follows statement that the Bengalis can make themselves masters of the principles of war "by study and circulation." This sentence by itself is enough to dispose of the theory of innocent magazine articles. Then after a few more lines come an ingenuous paragraph the first of which is that if the English had to leave India the people of the country would have to defend themselves against depredation, so it is as well to have some know

ledge of military science I forgot to mention Exhibits CLXXXV II, CLXXXIX and 205. "Company drill", "Battalion Drill," and "The Attack Drill" made easy.

At 15, Gopi Mohon Dutt's Lane was also found a copy of the "Modern Art of War," and copies of writings of Mazzini and Garibaldi. Throughout this case we have constant references to Mazzini and Garibaldi and books on Liberty; books harmless enough in themselves, but dangerous food for immature or unbalanced minds and of peculiar significance when found in conjunction with pistols and bombs. Not only does the literature found at this garden betake the fact that the members of the society were preparing themselves for active fighting by the study of military methods, some of the bombs also were of a size to negative the theory that they were intended for isolated acts of assassination. You don't require a bomb with a danger zone of 60 yards to exterminate an individual, though it is true that the Chandernagore bomb, intended for the Mayor, is described as powerful enough to wreck a large room and kill every one in it.

* ARTICLES FROM THE "YUGANTAR."

I shall now refer to some of the articles from the *Yugantar*. The first declaration for the printing and publishing of this paper was made on the 3rd March, 1906. It began its career of seditious teaching without delay. Ex. 1307 appeared in the issue of the 18th March. It headed Suchana, *i.e.*, "Introduction." It says "the Indians must have a true Swadesh, (*i.e.*, own country.)...The man who has not a Swadesh can protect nothing at all even if it gains many things. What "if he has a head" when he has no place to keep his head on? Oh Indians! Do not rush madly to earn wealth without ascertaining a place to keep it and to live in. Amidst all the various agitations and attempts bear it in mind Swadesh comes first and Swadeshi—after. It is for teaching this lesson that the Swadeshi agitation is overflowing

every place like a flood. It is for awakening in the Indians' mind the want of Swadesh and for giving a shape (to that feeling) that the Swadeshi has come. This Swadeshi agitation will go away breaking our toy-house. The fact that we do not have Swadesh will be brought home to us. ...We are prisoners to another's house. The other day the "Madcap Yoga" (the nom-de-plum of a contributor) began singing a song "Making the Swadesh over to other's hands how do you hope to have Swade-shi? Ah! After opening the house to the thief you mount guard on the street crossing. In other words, Swadeshi is useless without Swadesh and further, the Indians will realise that this only guiding mantra (principle) is the establishment of Swadesh. The current devotion will now have to be turned away from the imagination of Swadeshi to the establishment of Swadesh, the *Yugantar* is coming down into the field of action with this noble object." We have to-day to understand that in this time of terrible danger it is our imperative duty to restrain and unite the country's currents of thought and to apply them to one chief aim. This duty can to some extent be carried out with the help of a newspaper. If the vision is fastened on to only one aim, then the greatness of that aim removes all quarrels and discussions to a distance. We move in the field of action losing this vision into the future, and the thread which unites the past with the future. That is why we waste the powers of the country by always being divided into different sects militating against one another. All the sects wish for the welfare of their own country. Hence at the root there is only one point where all are united. Standing at that point of union the *Yugantar* will gather together the forces of the country and will try as much as it can to move them towards the same future." The gist of this article practically is "India for the Indians," with a plea for unity for the purpose of getting Swadesh without which Swadeshi is useless. There is no harm in this ideal, the danger is in the methods by which it is to be achieved. An indication of the methods is to be found

goods, though he adds the absurd gloss that the owners were compensated and given whatever compensation they wanted. Compensation on such lines would dissipate the funds at the disposal of the Swadeshi agitation, when enforced by violence, ceases to be what its supporters contend for it, an emblem of independence and becomes a most intolerable tyranny.

Another article, Ex. 1309-1 speaks of the unconquerable courage with which the *Yugantar* is preaching the mission of the complete independence of India, and later—who shall understand the demoniac artifice of the British? While at Barisal, Madaripur, Bonairpara the following of the 'monster Fuller are ruining the people and outraging women, in Western Bengal preparations are being made to lull (the Bengalis) to sleep by appointing them as temporary Judges, temporary Advocate-General and temporary clerk of the Crown. Again "The power of the sword, which is unsheathed for the protection of a right or in the name of religion, is indomitable; but the weapon in the hands of a persecutor has no power at all." "There is a whole religion in that blood, no power can exterminate the seed of liberty when it has germinated in the blood of great men. Our religion of to-day is still that of martyrdom, to-morrow it will be the religion of victory."... "It may to-day be the duty of the people to give up their lives in silence, but who can say that it will not to-morrow be the mission of the same people to win victory in a religious war." "If smitten by oppression the people can once realize this truth, that the slavery of a hundred centuries does not pass off unless (they learn to die) then there is a great danger for the king." The sense of the whole article is be ready to die for the country for that has the sanctum of religion. With this compare Barin's idea of contriving politics and religion.

The article, Ex. 1310-1, is a very violent one. "It is not consistent with justice for an oppressive ruler to claim loyalty from his people. India has ever been famous for her loyalty. But there is a limit even to human patience. The Hindus used to

worship their rulers looking on them as gods. But with a change of eras, through the conduct of the rulers loyalty is disappearing from the mass of the people. . . . Is it not madness for the oppressive ruling power to look for loyalty from the people whom it is ever seeking to rule with injustice and oppression? When looking into the question of the ruling power and the popular power in Europe, we see very clearly that loyalty has vanished from Europe. Constantly pained, oppressed and distressed by the oppression of their rulers, the mass of the people are founding so many bands of secret assassins,—the hint is that the same should be done in India. Is it credible that the Indian stricken with oppression is showing loyalty whole-heartedly? Gratitude and loyalty ought not to be expected from an oppressed nation." But shortly the article says—"India is oppressed therefore the the people should not be loyal but should rise." It is not necessary to quote at length from other articles. I have quoted at some length from the above four which appeared within the first 7 weeks of the paper's existence.

There is an article Ex. 1311-2 the gist of which is,—practise deceit, on occasions be violent but continually be stirring up trouble. It will be sufficient to quote one phrase, "Cordially welcome this God-send conflict and enmity and find room for it in your own house "

In Ex. 1313,-1 in a para headed, "The Life of Peace. Death in Battle," after a hint that Government is responsible for the increase in the population not being as much as it should be, is this,—"Warfare or revolution is a thousand times better than that 'Peace' under the virulence of which the number of deaths is gradually increasing at a rapid rate in India. Has God made no provision for one who in his life has not been able to be a man? He has certainly made provision. If you cannot in life be a man in death. The foreigner has come and fixed the way in which you should live ; but it depends completely on yourself alone how you will die. Others have interfered with your life.

of such influence either in his house or place of work, that he may easily become a traitor to his country". Another is whether he has "power to conceal secret counsel," and finally whether he will "remain under complete obedience to and control of the band." The members have to take oath before admission. The naming of a band is to be according to the wish of local members, but all bands are to be known by the name of "Mandal" among their members. The members of the bands were to be allowed to join contemporary events and agitations. They were to join agitations and undertakings "which awaken a desire for independence." The *Yugantar* being always ready to give advice. "Therefore as the members of the bands will on the one hand try their utmost (lit. with life at stake) to increase the scope of the bands, so they should remain attentive and persevering in keeping the country excited by these undertakings and agitations." The article refers to a previous article and says—"We tried to explain how far the acquisition of physical strength has become necessary to our country," an excellent ideal in itself, but the sting lies in the application, "therefore every band should recognise the cultivation of physical strength as a principal means of achieving our object." And the article ends with the significant words:—"After the formation of a band, if we are informed, we shall try to the best of our power to give counsel and to connect it with other bands. Much inconvenience may be felt if any letter containing the information arrives at the *Yugantar* office along with other letters, therefore it would be greatly convenient if such letters reach the Office with the aid of some person." The last words suggest the desirability of the leaders of the band getting into personal touch with the person, conducting the *Yugantar*.

It might be suggested about this article as about many others from the *Yugantar*, that it is impossible that revolution could have been openly preached. The answer is that Government had shown such extraordinary inaction in dealing with this seditious paper—the prosecution for sedition did not begin till nearly a year later,—

that temerity grew with indulgence. In Ex. 1322-1 we have this passage—"If a ruler oppresses the people, the crown of that ruler, be he even so powerful, some day or other steps down to the dust through the blows dealt by the people. The law of righteousness is very stringent, it is no respecter of Kings and Badshahs. "Every stroke shall be repaid. The longer the payment is with-holden, the better for you, for compound interest is the rate and usage of the Exchequer. All the strokes that you let fall upon the poor people—there is retaliation for each of them. There is no harm if there is delay in retaliating, for it is verily the rule, in this world that the more delay there is in the redress the interest on the sin—the degree of revenge—increases the more. As soon as oppression attains its fullest measure, a fierce revolution takes place in the kingdom, and in that revolution the ruling power is exterminated to its root—this is certain and inevitable like a mathematical truth."

Ex. 1322-1 is an article of the 14th October, two days before the anniversary of the Partition, entitled "Rakhibandhan." In it occur the words "the English intoxicated as they are with pride shall bow their heads before the army of seven crores of "Santans" (children, apparently an allusion to Santan bands in Bankim Chandra's novel *Ananda Math*, a novel to which there is frequent reference in the evidence). "We shall keep nothing Dideshi. The means of doing this is to apply strength, the materials are men, and lathis, and the price is freshly cut heads."

In Ex. 1323-1 is a passage "we have no means of learning military tactics and drill openly and by fair means. But we cannot say there is absolutely no means. If the Bengalis will undertake the task of this education into their own hands, then, if not exactly military drill, they may derive much instruction useful in war." Then there is an article showing how modern weapons of war have revolutionized warfare.

Ex. 1323-1 is a notice stating that the conductors of the *Jugantar* were opening a hostel for students desiring to attend the newly started National School probably considering the character

of the paper, with the idea of finding another way to poison the mind of the young, which it was the *Yugantar's* special endeavour to attract to its pernicious doctrines.

There is also a paragraph in the same number mentioning arrangements for teaching Hindi without fees. The reason is given that Hindi is the Lingua Franca of India and a knowledge of it will enable preachers of the Mother's name to travel all over India preaching. In this paragraph is the passage "People whose country has been sold to others, whose king has so ordered that if brother did not cut brother's throat, it would be hard to earn a living, such a people would not be united even if they possessed one language." In this connection it may be noted that two Hindi Primers, a Hindi Reader and a Hindi Grammar were found at 15, Gopi Mohan Dutt's Lane. I don't desire to lay too much stress on this, but it is an instance of the teaching of the *Yugantar* being followed. In Ex. LXXVI found in the garden, Hindi is also mentioned as a subject to be studied.

In Ex. 13:4:1 the hope is expressed that the English may not leave India. The reason is given, "as fire is brought into a piece of cork by rubbing of flint, similarly a flask is necessary if the vanished power of ruling and protecting a kingdom is to be established among the Indians. Hence may Providence not give the Englishman the idea of suddenly going away for fire cannot be produced with only one piece of stone." The article in which this passage occurs is commented on in a note by the Editor on a letter by one Ananta Nandan Bramachari. This name is found in the book, Ex. LXXVI. He enquires why the national awakening will not be possible except by the English staying in the country and puts alternatives of what might happen if the English left. The Editorial note states that "it is perfectly true that anarchy is by far better than our present state of well-regulated slavery. It is, therefore, rather preferable for the Indian : devoid of manliness and therefore helpless as he is, if India is deprived suddenly of the presence of the English he-

places and to discuss about the accomplishment of their own duties. It is just this sort of incident of which Bankim Chandra has left a description in his *Ananda Math*. It was at dead of night in dense forests that bands of Sanyasis used to collect arms for independence." And in this connection I may refer to the fact that ten Sanyasi robbers were found in the garden; and at the time of arrest in the garden of Ullaskar, the expert chemist and manufacturer of bomb, was found dressed in such a robe. Ex. 1379-1 is an article on the "Establishment of Swaraj." It appears to be a criticism of the views of those who suggested that India might attain independence by peaceful methods. It scorns such an idea. It points out that if Swadeshi courts were established all the people might not be willing to go to them and that in criminal cases the English would try to assert their existence. It says "compromise with the foreigner is impossible, either you live or I live this should be the decision." It dismisses the idea of Passive Resistance with these words: "The law of the English is established on their brute force, therefore if to liberate ourselves from that law it is necessary to accumulate brute force then that is now our right course of action," and again, "what has occurred in their countries must be re-enacted in ours. There is no other door of admission into life than death." Then it asks if the "Sakti" (*i.e.* strength) worshipping sons of Bengal will shrink from the shedding of blood. "The number of Englishmen in the entire country is not above one lakh and a-half. And what is the number of English in each district? If you are firm in your resolution you can in a single day bring English rule to an end. Begin to lay down life after taking a life. Sacrifice your life in the shrine of independence, without bloodshed the worship of the goddess will not be accomplished."

There is an article of the same date; one of a series on "the truth about revolution." It is on the collection of funds. It refers to the precious articles on the building up of public opinion and collection of brute force and says "in matter of the collec-

tion of funds it is necessary to speak of another stage, that is real war. In these three stages these different paths are followed. Money has to be earned by one means at the time of building up public opinion ; another means is adopted for collecting arms, and a still more difficult path is followed in defraying the expenses of war at the time of a real friction with the sovereign power." It then explains that as the work of revolution has at first to be done so noiselessly money is to be got by voluntary donations. But when the work has outgrown its infancy it becomes impossible to depend on voluntary subscriptions and money has to be taken by force from the community. Then it argues that this method may seem wrong but is justifiable, and because revolution is for the good of society must extend to depre-dations. Then it says : "Why are thefts and dacoities considered as offences ? It is no sin but rather a work of religious merit to destroy this small good (*i. e.* security of property) for a larger good. If revolutionaries make money from the miserly and luxurious rich men of a community by applying force, that action is perfectly justifiable." Then it points out that "when revolution has thoroughly started the sovereign power is considered a dacoit," to share is no offence, in defraying the expense of establishing a future sovereign power with money stolen by it. The word to be drawn is loot the Government treasuries, at last when the work of revolution turns into a real warfare, taxes have to be collected openly from the people. And this argument appears to find its fulfilment in the garden. To my mind plans found in the garden point strongly to some such ideas. Mr. Bonnerji argues that there is nothing to show that the plans were meant for purposes of dacoity ; he suggests plan-drawing was part of a course of study, and it may have been intended for the far-off revolution, but not for one in the near future. But what is the nature of these maps ? Ex. XL 9 shows the situation of a house with the name of villages round and roads and mahals running close to the house. One Mahal is called "Kalkalis Khyal" and besides

that are the words "1st batch." Another Mahal is "Pardaha Khal" and by it are the words "2nd batch to come to this." On the back of the same plan is an enlarged plan of the house shown on the part. It shows the position of the various huts, it shows where the grain is kept and where the property is kept. It shows a room with the words "man 1 another room with "nephew 1" and verandah with "servant 1." The numbers 27 and 20 probably represent the ages of the individuals referred to. Underneath the plan is a full description evidently of the persons living there "men 3, women 5 servant 1." Then the words "1st batch" will have the boat of Jauni Manji hired for Kelhali and back through Jatin Babu after arrival at Basirhat, 2nd batch after arriving at Pardaha Khal—"What have names and arrangements like this to do with instructions in drawing, or a far-off revolution? EX. XL 6 is a plan of some houses, the same places are shown and there is the name of the same boatman. EX XL 10 shows a river with various ghats and villages it also shows a building in which the only thing marked besides the configuration of the building and the position of doors, is "chest" XL 12 is another map on the batch of which are 12 names in pencil. Some are undecipherable, but 9 can be made out, and two of these names Sishir and Sushil appear in the book EX. LXXVI under the words . "the first batch to consist of" Perhaps also the initials U. D. in EX. LXXVI may refer to the same person as Ullas in the list on EX. XLI 2. It is of course impossible to say that the two lists of names refer to the same persons or things, one can only point out coincidences. Another map EX. XLI 4 shows a house with the position and distance of the Thana and the Gaur forest from the house, and leading away from the house in different directions are arrowheads, while at the top of the map are the words "ways to be investigated" and arrowheads. Evidently the arrowheads leading from the house are routes by which the house is to be approached or departed from. The arrowheads all lead to an opposite direction to that in which the Thana is situated, and all but one lead to or alongside the Gaur Forest. I have pointed out

that Ex. 640 found at 134, Harrison Road, is a copy of this map. Not only are these maps the sort of thing would expect to find it intended for the purpose of committing a dacoity, but it is significant that they were found buried in the iron tank. This fact alone would suggest that they do not bear the innocent construction that is sought to be put on them. If these plans were intended for the purposes of dacoity it is not unreasonable to suppose that the false beards were intended for the same object. Very important in connection with Exs. XL 14 and XL 7, the small scale plan of the same locality, is Ex. 653 found at 134, Harrison Road. This is a paper with a series of questions enquiring whether boats are to be had at the junction of the canal Ganges, and this Maldah road and the Mahanads, where there is deep jungle, the number of inmates in the house, time of sleeping, etc. Nearly all the questions asked in this paper are answered in the maps.

To return to the *Yugantar*.

In Ex. 1332 there is an appeal for the people in every village and hamlet to form a "gigantic National Band" and to initiate themselves in the Sakti mantra. (Sakti is one of the manifestations of the goddess Durga, the manifestation of force.) In another article of the same date, "The Ghat's Nest," is a repetition of the calumny that under British rule chastity of women is not safe, an appeal to the passions which would find special response in the hearts of young and chivalrous minded. There is a still more violent article in Ex. 1333-1 in the same strain. "How can a people who are devoid of pure habits, devoid of principles, devoid of manliness sit in judgment. Does the man who has an idea of his mother's and sisters' chastity ever outrage the modesty of another's mother and sister? You cannot by weeping get justice done in respect to one who violates the chastity of a woman. If you be men expiate sin by burning that human beast alive. And if you cannot master that amount of courage go to perdition, your death is preferable before the world. There is not a day, there is not a moment in which the beasts in India do not commit oppression on woman.

Ex. 1334-1 referring to the attempt on the Lieutenant-Governor's train at Khargpur has peculiar significance. It says "many people have guessed as well as discussed on many causes. We say that it was not by the hand of man, it was a signal made by the finger of God." Other articles from the *Yugantar* have been put in but it is unnecessary to refer to more. These from which I have quoted cover roughly $1\frac{1}{2}$ years the period for which Barin speaks of being connected with it. Ullasker speaks of having got an introduction to Barin by reason of the announcement in the *Yugantar* of the formation of a secret society. Upendra Nath Banerji says that at one time he was a regular contributor to it. Hrishikesh speaks of being shown some copies by Upen and asking him to enquire if there was really an organization to free the country from the foreign yoke.

The passages which I have quoted from the *Yugantar* exhibit a burning hatred of the British race, they breathe revolution in every line, they point out how revolution is to be effected, no calumny and no artifice is left out which is likely to instil the people of the country with the same idea or to catch the impressionable minds of youth and wherever we can reasonably expect to do so we find indications of the methods advocated by the paper in the garden. In the evidence I do not see how any reasonable man can doubt the connection between the two. And as regards Barin's personal connection with the *Yugantar* at about the time that it was started we find corroboration in Ex. 1272 a subscription book of the *Yugantar*. On the inside of the cover is written apparently in Barin's writing, 1st page written on by mistake and destroyed B. Ghose 22-3-06. A book which plays a considerable part in connection with this case is the "Mukti Kon Pathe" (which way lies salvation.) It is a reprint by Abinash, the accused from the *Yugantar*. It contains many of the articles to which I have already referred, and as the whole book is in the same strain as those articles I do not propose to quote from it. While pointing out that we have indications of the methods advocated by the *Yugantar* being followed in

course of study which agrees with Barin's view as to the necessity of combining religion and political training and follows the principles reiterated in the article of the *Yugantar*. It bears out the theory of the prosecution that the object of the society was to teach the youngmen of the country at a time when their minds were impressionably and to fill their minds with religion and politics combined, the politics always ruling the shape of revolutionary history.

The entry B. G. to teach him the mechanical part of the thing comes just under the initials U. D. If these initials refer to Ulashkar Dutt who we knew was a chemist the entry may mean that he was to be brought to make the shells into which explosives were to be packed. In connection with this book reference may be made to Ex. 338 which speaks of 3 circles and apparently apportion work to each circle. The work is indicated by abbreviation and we can only guess what the abbreviations mean. Under this are sets of initials apparently showing the distribution of persons to each circle. The first circle is designated as "B and W" and in the list of initials for the first circle is B. G. In Ex. LXXVI we have the entry "B G in charge of band mainly at Calcutta. Under the second circle we have the abbreviations Ex I mark I, and the initials against the 2nd circle are U. D. and U. B. It is suggested the abbreviations stand for "experimental, mechanical, anarchical." In Ex. LXXVI we have it that U. B. was to be taught the mechanical part of the thing and we know Ullaskar was a chemist. Under the circle we have the abbreviations "miss, Tn" and among the initials we have B. G. and U. B. If miss stands for "missionary" it would be a correct description of Upendra Nath Banerjee and if "Tn" stands for "technical," we have it from Ex. LXXVI that B. G. was to teach the mechanical part of the thing." No explanation has been offered by the defence of the meaning to be attached to the abbreviations, the reference is that they know nothing about it. There is nothing to show in whose writing the entries and initials are, but

at places, alleged to be places where the members of the conspiracy used to meet or to which letters addressed to them used to be sent in connection with the conspiracy, some were found at the offices of newspapers and at the Chattra Bbandar Office which, it is alleged, were organisations for the purpose, of carrying out the conspiracy. As to the admissibility of documents found in the possession of an accused there can be no question. The fact of any particular document being in his possession is a relevant fact, the value of it is another question. The objection appears to me to compound the question of admissibility and value.

Documents found in the possession of persons, not undergoing trial, but who are members of the conspiracy, may or may not be admissible according to circumstances. If they are written by any person as to whom there is reasonable ground for believing that he was a member of the conspiracy they are admissible against accused under Sec 10 of the Evidence Act, if in reference to the common intention of the conspirators. A document found in the possession of a person believed to be a conspirator might be admissible in the first instance for clearing that that person was a conspirator, though the statements contained in it might not be admissible to prove that the accused were conspirators, if not written by a believed conspirator.

Documents found at a place used as a meeting place by the conspirators might or might not be admissible according to circumstances. For instance, the owner of the house might be a perfectly innocent agent. In such a case all documents found in his possession would not be admissible. But if they had reference to the conspiracy they would be admissible, the possession of the agent being the possession of the principal. If they had no reference to the conspiracy they would be useless as evidence.

The same principle applies to documents found at the offices of newspapers. If it is shown that the newspaper was an organization for the purpose of carrying on the conspiracy, documents having reference to show that the accused were parties to the conspiracy.

two persons are proved to be conspirators, a third who is shown to be connected with both is also a conspirator. It must be clearly shown that his connection was that of a conspirator. Now while I have shown that the formation of bands in the various districts was one of the methods adopted in the *Yugantar* and that the connection of the *Yugantar* with the conspiracy is established, it does not follow that every Club or Samiti in Bengal was in co operation with the conspiracy. Nor, assuming it to be proved that any particular band was in co-operation with the conspiracy, does it follow that every member of the band was a conspirator. A conspiracy from its very nature requires caution, and doubtless there would be a period of probation at any rate in most cases before a person joining such a band was admitted to its secrets. Similarly because a man is a National Volunteer or an ardent or even violent supporter of Swadeshi principles, it does not follow that he is a conspirator. Again if any particular paper be proved to be a hint of the conspiracy it does not follow that every one connected with the paper is a conspirator; the proprietor or the Editor would stand on a very different footing from a proof reader. Nor because the *Yugantar* was a limit of the conspiracy does it follow that every paper that preached sedition was also a limit of it. Ill weeds grow apace and it may well be that the immunity of the *Yugantar* for a considerable period attracted competitors in a probably lucrative field not only in the matter of newspapers, but of other seditious writings also. Similarly inflammatory speeches are not enough to prove a man a conspirator. Finally because certain persons were caught in the garden it does not follow that they were conspirators, provided they can give a reasonable explanation of their presence there. As I have mentioned in the case of district bands it is only reasonable to suppose there was a period of probation for recruits and though one might expect that they would be put to some test before being admitted to the very headquarters of the conspiracy, it must be remembered that Upen who was apparently the chief missionary was generally

to be found there, and that Calcutta with its College hostels and young boys fervently coming from outside would be the most fertile recruiting ground. I have gone into these points at this stage to avoid repetition later.

CASE AGAINST ACCUSED INDIVIDUALLY BARIN.

I now deal with the case against the accused individually. As against Barin little more remains to be said. I have not mentioned that he was part owner with his brothers and sisters of the garden. I have also not mentioned one entry in Ex. 239, which is of importance, viz. "Core earth to be sent." This would appear to refer to earth for the manufacture of moulds. I have pointed out what he says in his confession which, I am clearly of opinion, was both revolutionary and in the main true, though he has tried to secure his associates, as I have pointed out. Far from being a false and tutored confession I believe he gloried in what he had done. I have also pointed out how the confessions of others agree with his, how he himself showed the police where the articles in the garden were buried, and the evidence of the shadowing witnesses or to the various places to which he was followed. I have also pointed out that the writing of facts of Exs. 382 and 667, found at Nos. 15 and 134 respectively, appears to be his, when compared with admitted writing. I have also referred to his book Ex. LXXXV.

There can be no possible doubt that he was a member of the conspiracy.

Then remains the evidence in connection with the murder of Mrs. and Miss Kennedy of Muzafferpur. That the bomb which killed them was intended for Mr. Kingsford there can be no doubt. It was thrown just outside Mr. Kingsford's gate and the unfortunate ladies were riding in a carriage like Mr. Kingsford's. Khudiram Bose was hanged for the murder and his accomplice, who went by the name of Dinesh Chandra Roy, committed suicide on the Mokameh platform when about to be arrested. There is evidence regarding the stay of these two persons at Muzafferpur.

Kishori Mohan Banerji, the head clerk of the Mahata Wards Estate, states that two persons giving their names as Dinesh Chandra Roy and Durga Dass Sen put up at the Dharmasala about the end of March. Dinesh stated their money had been stolen in the train and asked if he might write to Calcutta for money to be sent to witness's care. On the 9th April Rs 20 came by money order to Dinesh and the witness signed for him. Durga Dass had left the previous day, Dinesh left on the following day. The witness did not see either of them again.

Kheman Kahar, the Dharmasala Choukidar, however, states that the same two men came back again to the Dharmasala and stayed till the night of murder. He, however, says that the companion of Dinesh was Khudiram. The Wards head clerk denies that the photo of Khudiram is the photo of the man whom he knew as Durga Dass Sen. He, however, has an interest in being reticent on this matter as he was suspected in connection with the murder and actually committed to the Sessions, but the case was withdrawn. He, however, admits that of the two photos taken of Dinesh, who committed suicide, one is a little like Dinesh whom he says he saw at the Dharmasala. He does not realise that both are of the same man, and that was the man who was with Khudiram. The witness Charu Chandra Chaki does not realise that both are the photos of the same man, but he recognises one of them as that of his brother Profulla. Here then we have the fact that the real name of the suicide was Profulla Chaki, and through the evidence we have the fact that the man who stayed at Mazafferpur twice and who had money sent to him c/o Kishori Mohan was Profulla Chaki. Now we have a money order form Ex. 873 showing Rs. 20 sent to Dinesh Chandra Roy, c/o Kishori Mohan Banerji, the sender purporting to be Satya Bhushan Sarkar. The receipt, which was produced at the Murafferpur trial, from Dinesh "for Rs. 20 on account of M. O No. 2842, dated 9-4-08" forms number and amount of the Money Order sent to Dinesh. Now in the garden was found Ex. 2314 which is the receipt given by the

post office to the sender of a M. O. No. 2842 for Rs. 20 payable to Dinesh Chandra Roy, dated 8th April, and stamped Harrison Road. We thus have a connection between the money order sent to Dinesh, *alias* Prafulla, and the garden. Now EX. CL is a letter found in the garden. It is to "Dear Suku Dada" and is signed by Dinesh Chandra Roy, c-o Babu Kishori Mohan Banerjee, Head Clerk, Mahata Wards Estate, Muzafferpur. The letter says, "We have reached here safe, all the money from Durga Dass' pocket has been lost in the way." The same story as told to Kishori. The writer then asks for money and says "I have not seen the bridegroom, but I have examined his house pretty well. The house of the bridegroom is not bad. I shall let you know everything. Please send money in the name mentioned below. In sending the money please do not put any address of our place there ('i. e. the addressee's place'). Put a wrong address." It is suggested that by bridegroom, Mr. Kingsford is meant. The writer could hardly have referred to some actual bridegroom, for why his house will be examined? And why does the writer want the address, from which the money is to be sent, concealed? Prafulla's brother no doubt denies that this letter is written by Prafulla, though he admits the English words in it may be Prafulla's; he is not familiar with his brother's English writing. He naturally would obey it. But we have this that a man calling himself Dinesh is writing from Muzafferpur and asking for money to be sent c-o Kishori Babu: that a letter, the terms of which are suspicious, is found in the garden, where also a receipt is found for money sent to Muzafferpur and signed by Kishori on behalf of a man Dinesh, who turns out to be Prafulla Chaki. The letter is to one Suku Dada and there is evidence of postman that he sometimes delivered letters at the garden to Barin under the name of Sukumar. Further we have in the garden a map EX. XI-15 found, which is described by Mr. Woodman, the Collector of Muzafferpur, as a very fairly accurate plan of part of Muzafferpur and showing the Pharnasala accurately, and in this plan the judge's house is includ-

Barin, Ullaskar and Hem were engaged in manufacturing bombs to do away with the lives of those Government officials who by repressive measures, hampered our work *viz*, the Lieutenant-Governor and Mr. Kingsford. He then mentions hearing from Barin about the attempt to wreck the train at Kharagpur and that he knew that Prafulla and Khudiram would be sent to Mozafferour to take Mr. Kingsford's life. He said nothing when he heard this "because he was not in charge of that department, but in charge of education of the boys. Then, he says, he used to teach new recruits and gives the reason for making the confession, because we agreed to tell the truth if arrested so that the innocent might not suffer and that our successors may use greater caution. The closing words certainly indicate regret, but rather a spirit of defiance.

As for corroboration we have it as regards the attempt on the tram through the medium of Barin's confession, in which details have been given, which details I have pointed out are corroborated. There is also corroboration of the fact that he used to teach the boys in the evidence of the prosecution witnesses. On more than one occasion he was seen with young men round him reading. The witness Dinohandhu Bhattacharjee, Sub Inspector of Police, found him there dressed as a Sanyasi, talking to the accused Saulendra and appears to have been much impressed with him, on account of his apparent youth and learning.

His confession also receives support from the confession of Barin, Ullaskar and Hrishu Kesh. Ullaskar speaks of him as one of the actual workers and Hrishu Kesh speaks of getting Upen to enquire in the *Yugantar* office if there was an organisation for the purpose of freeing the country and of being introduced to Barin by Upen at the *Yugantar* office. His connection with the *Yugantar* is further supported by the fact that was found at the office when it was searched on the 1st July, 1907.

Then we have evidence of witness No 39, the head master of a school at which Upen was for 11 months a teacher, that some

of the entries in book, Ex. LXXVI are like Upen's writings and he believes them to be his. It is true he said that he only had occasion to see Upen's writing on applications for leave and once on examination papers, but it seems almost impossible that during 11 months, when teaching at the same school, the witness should have seen his writing so seldom.

In this were found Exhibits LXXVII to LXXXIII inclusive Exhibit LXXVII in the second page of correction to the cyclostyle work on explosives, LXXVIII is a slip of paper with initials and numbers, LXXIX is the document containing details about the E. B. S. Railway line and countries along side of it. Ex. LXXX is a letter which was in the envelope, Ex. LXXXI, addressed to Paresh. The letter does not appear to belong to the envelope as it is marked Jessore, while post mark on the envelope is Chilmari. The importance of the letter from the prosecution point of view is the reference to the "Key of 78". Hrishī Kesh in his confession speaks of being taken to 78, Russa Road by Barn and Upen and on that occasion there was talk about the Mayor of Chandernagore being taught a lesson for stopping a public meeting. Hem Chunder Dass was also followed to this house on two occasions. A telegram (Ex. 1380) was also sent by one Birkumar from 23, Scott's Lane, one of the places of association, saying "send key or come with key." The name of Birkumar is found in Ex. 201, an account book found in the garden and it is suggested that this telegram refers to the key of 78, Russa Road. This can of course only be conjectured, but the telegram is to a man Saraju at Jessore, Ex. LXXX is from Jessore. It may be that the writer of the letter had taken the key away with him. We have men of the same name, as a name found in a garden book, wiring for a key on 1st April, and from Hrishī Kesh's confession we had a meeting at No. 78 in the first week in April.

LXXXII is a letter to Sishir and does not concern Upen except in so far as it shows connection between the two men. Ex. 924, an intercepted letter, from Krishna Jibon to Upen pro-

sion. He was duly warned as all the other confessing accused were. He stated that he had known Barin 4 or 5 years and joined the Society 9 or 10 months previously, because it had been announced in the *Yugantar* that a Secret Society would be started, and he got introduced to it by Barin. He states he used to prepare explosives, which he had learned to do before joining the Society, in a private laboratory of his. He states that he made a futile attempt to wreck the L.-G.'s train, but could not set the mine properly as the train arrived too soon. He made that mine himself and also the one intended for the attempt at Kharagpur, though he did not actually go on the latter expedition. This mine, he says, he made in a house in Goabagan. He had been at the garden for about 8 or 10 months staying there for 2 or 3 days at a time. He says they had a religious and moral training class for new-comers and he also used to prepare and experiment with explosives. He also states that Hem Chandra Dass used to make explosives, but not in the garden. He says he knew that Prafulla and Khudiram went to Mozaffarpur because he was at Gopi Mohon Dutt's Lane when they started. He states that he heard that Hem made the bomb, but he was not present. He then says that Barin acted as leader of the Society and named a few persons as actual workers : other new-comers, he said, had not been taken into confidence. He then admits making mines for two attempts and also that he made explosives in the garden. On the latter point there is corroboration in the findings of and at the garden. The first attempt he speaks of was apparently the first attempt made on the L.-G. As to this attempt Barin supports his statement. As to the fact that he has making bombs Upen also supports him. Hrishikesh speaks of a journey to Chandernagore for the purpose of wrecking the L.-G.'s train. It is not quite clear to which attempt he refers : if it is the first, the statement is contradictory to Ullaskar's as Ullaskar says he went alone : though the two might be reconciled, on the theory that Ullaskar means that he alone went to the place where the attempt

arrested was in the garb of a Sanyasi.

We have the initials U. D. in Exhibits LXXVI, 239 and 667. In 239 we have it against the second circle, if "2 C" stands for 2nd circle, which is not an unreasonable supposition, concerning as it does just below, the scheme of work for 3 circles ; and the 2nd circle is the one of which the scheme of work was Ex X mark Xan. In 239 we also have an entry "U D. to be kept here H. D to be looked up. They spend a week together. M. S. S. from H D " If H. D stands for Hem Dass and the M. S. S. referred to, is the work on explosives which it is suggested Hem Dass brought from Paris, we have an instance of the combination of Ullaskar and Hem Dass. A little below that entry is another in which the name Ullash appears : "Dr. Dhude to be kept in the garden and Ullas and A. G. and B. G. informed." Again in Exhibit 201 we have references which may refer to this accused. Against 28th February "Rs. 55 U. D." another against the 1st March.

Another account book Ex. 1249 was found at No 15 it is argued that this is a continuation of Exhibit 201 and certainly there are facts which support the suggestion. The last regular entry in Ex. 201 is dated 18th Chaitra, i. e., 31st March. At the end of the book there are some entries a number of cancelled accounts. Ex 1249 begins with accounts for the 22nd Chaitra, Friday. This is clearly a mistake for 21st Chaitra the mistake being rectified on the 1st Baisakh. If the cancelled accounts cover two days the two accounts become continuous as to date. There are indications that the accounts 1249 refer to two places for each date is headed with two numbers added together thus 5 plus 7 equal to 12. This book no doubt cannot refer to an account at No. 15 for it ends on the 19th April, the day on which No. 15 was taken. If the view be correct that it refers to accounts of two places, one may be the garden, but what is the other ? It might be 78 Russa Road as it opens 2 days after the telegram "send key or come with key." This, however, can only be more

conjectured as we don't know what happened at No. 78 beyond that Hem Dass followed there on two occasions and what is stated in Rishi Keshe's confession. In this book Ex. 1249 occurs the name Ullas Babu. Ex. 632 is a piece of paper found at 134, Harrison Road containing notes apparently of sums spent and in hand. In it we find Ullas Rs. 50. In 201 against the 28th February there is entry "Rs. 50 U D." There are other entries in this paper corroborating the connection between the garden and No. 134, viz, Khulna Rs. 10 in both and watch repair Rs. 2 in both.

The shadowing witnesses Satish, Suresh Chandi and Bolai all speak to seeing him at No. 15 and Satish and Suresh also to seeing him at the garden. Witness No. 131, whom I have already said I regard as a most truthful witness, also speaks to seeing him on the road near the garden and witness No. 165 speaks to seeing him in the garden.

Finally the name Ullas is one of those in the back of Ex. XL 12 the map. Mr. Danerji suggests that he only wanted to join the Society, because it was a secret society. Considering the length of time that he was at the garden it is idle to suggest that he was unaware of the objects of it. He also declined to answer any questions and did not withdraw his confession till the trial began in this court.

There cannot be slightest doubt that he also was one of the conspirators.

I deal next with the case of Indu Bhusan Roy. He made a confession to the Magistrate. He stated that he had been living at the garden for 1½ months studying the *Gita* and making shells. He was introduced to it by Barin, who said he could join if he wished. He says that he "already knew that its object was to make India free from the Feringhi's yoke and to establish a better Government." After failing in the Entrance Examination in March, 1907, he was at home for 2 months and then wandered about. He says he went to live at the garden and a few days after began to make shells with Barin, Bibhuti and Profulla. He

admits having thrown a bomb at Chandernagore into the room of the Mayor, when he was at dinner. At the time he was with Barin and a Serampore man, whose name he does not know. He says he got his ideas "from studying histories, viz., the "Ananda math" of Bankim Babu and Russian Revolutionary History."

He is mentioned in the confessions of Barin and Ullaskar. Barin speaks of him as the man who threw the bomb into the Mayor's house, Naren Gossain of Serampore being with them. Ullaskar speaks of him as one of the actual workers. The shadowing officers Purna Biswas, Sarat Palit, Satish and Suresh and the spy Sarat Dass corroborate Barin's story as to the details of this excursion, and Satish and Suresh identify Indu Bhusan as one of the three men. And as to his being at the garden there is the evidence of four shadowing witnesses—Satish, Suresh, Chandi and Sarat Palit. I may here add that he was also seen at No. 15 by Satish and Suresh, and whatever may be said about the capacity of these two witnesses for identification of persons at the garden and No. 15, appears that they have made some mistakes, in the case of this accused we have the fact that they had already followed him to Chandernagore and, therefore, would be less likely to make mistakes.

Now at the search of the garden a coat was found which was claimed at the time by Indu Bhusan. In the pocket of it was found a pocket-book, Ex. LXI, which contained certain papers LVI, LVII and LVIII. The first of these papers is the receipt given to the sender of a money order by the post office. It was for Rs. 20 sent to the accused Sishir in Bombay (vide Ex. 846 and 869). It purported to have been sent by one Charu Chander Rai Chaudhuri, and the payee's acknowledgment, Ex. 2311, addressed to 32, Muraripuker Road, was found in the garden. Who Charu Chander was we don't know, but we have this fact that a receipt for money sent to Sishir is found in a pocket-book in Indu Bhusan's coat.

Ex. CII is a letter signed by Indu, and on the same paper

is another letter signed Chaki to Sishir. Presumably the two letters would be to the same person. The paper was found in envelope Ex. CLII addressed to Sishir in Bombay at the same address to which the money was sent. The Calcutta postmark on the envelope is dated the same day on which the money order was despatched, *viz*, 23rd April. The letter which is signed Indu, mentions one Upen as having sent a letter. It is suggested this is Ex. CXV, but that is only a conjecture. It also mentions Biren, Sudhir and Krishna Jibon. All these names are found among the accused persons, and the first two in Ex. LXXVI. The brother of Profulla Chaki, whose connection with the garden I have already pointed out, believes the second letter to be in Profulla's writing.

Further in the first letter Indu is asking the addressee when he has put the maps which were with him. Now the plan XL 10 includes the village Sagardari, which is where Sishir comes from and in the list (4) on the back of XL 12 we find the name Indu, and the names of Sishir, Ullas and a name which appears to be Biren's. The recurrence of these names is significant.

Again, Ex. 198 is a post card found in the garden. It is from Hatwa and is addressed to Indu Bhusan Roy, 30-2, Harrison Road. The post card is of the 8th April. Now in Ex. LVI is an entry thus : Hatwa Post—2 Ashin, night 1-30. The word Hatwa is scratched out. What the reference is it is unknown, but here is another coincidence in the name Hatwa. In the same note book Ex LVI is an entry in Bengali, headed Agni Diksha which means "initiation by fire." The next entry put on the next page is "Saturday, 9th Chaitra, 1314, 9-30 p. m." This is the date and the time at which the bomb was thrown at the Mayor of Chandernagore. Indu Bhusan's house at Sriphaltolla was searched and some papers seized. Among the things found was a book containing school exercises, produced for the purpose of proving handwriting. This is Ex. 747. At the same Speech a list of rules of a Samiti with 23 names in it, including Indu

Bhusan's, was found. There is nothing harmful in those rules. These two Exhibits 747 and 753 are evidently in the same hand, and the name of Indu Bhusan in the list is written by the same hand as the signature on Ex 1006. The name is exactly like the signature. 1006 is money order payable to Upendra Nath Banerji at 32, Muraripuker Road, it purports to have been receipted by Upendra Nath Banerji, the signature being witnessed by "Indu Bhusan Ray Chowdhuri." This then is clearly signed by Indu Bhusan, the accused, and that he calls himself "Rai Chowdhuri" as well as Rai, appears from Ex. 747, where the name is written in full on the 15th page. Here is another instance of his connection with Upen.

Now some of the writings in Ex. 755 is in Bengali. The English writing I have shown to be in Indu Bhusan's hand. The Bengali writing in Ex. 755 appears to be the same writing as that of Ex. CLI. Not only is the general character of the writing the same but the short "i"s are written in rather a peculiar way, thus in both documents (4) is written, thus it is then beyond doubt that Ex. CLI was written by him. There we have a double corroboration of the fact of Indu Bhusan's connection with Upen. There is another singular fact. While I was examining the hand-writing I came to the conclusion that certain letters in Ex. LVII, found in Ex. LVI were like the letters in Ex. 1006, and this was before the entries in Ex. LVI, which are in vernacular about "Saturday, 9th Chaitra 1, etc." were brought to my notice, or rather I had quite forgotten about the Entry for I see that Mr. Birley notices it in his commitment order. The "I" of "I must" and the "w" of "what" in Ex. LVII are exactly like the T in the signature on Ex. 1006 and the "w" in the word witness. Now Ex. LVII appears to be a means of what happens if picric acid and gunpowders, combined in various proportion, take fire, *i. e.*, taking "pic" to mean picric acid and G. P. to stand for gunpowder. And this is a singular coincidence when taken in conjunction with his confession that at the garden he was preparing shells, if I am right in my view that the two were by the same hand.

This is evidently the village between certain station on the Bengal Nagpur Railway. Mr. Lee, a Sub-divisional Officer on that railway, gives the distance between Kharagpur and Adra as 102 miles, between Calcutta and Kharagpur as 72 miles and between Howrah and Adra as 174 miles. In fact Mr. Lee seems to be out in his figures by one mile according to the Bengal Nagpur Railway time table which gives the distance of Howrah to Adra as 175 miles. If then it is also a mile short in its distance between Calcutta and Kharagpur, we find the real distance is 73 and that in the 3rd figure in the above list. The total in the list is 199, the time table gives the distance of Howrah to Purulia as 200. It is not unreasonable to suppose that K. H. stands for Kharagpur, a place which has acquired notoriety because of the attempt on the L.G.'s train at or near that place. On the back of the piece of paper are the words "M. N. Roy, Sasthya Shahay Ausadhalaya, 30-2, Harrison Road."

Again in the book, Ex. 239, is the entry "J B." lodged at 12 or at 30-2, Harrison Road, Swasthya Sahaya Ausadhalaya." Here then we have four witnesses of No. 30-2, being connected with the garden in connection with the different names and we have the evidence of a person having gone from 38-4, Raja Novo-Kissen's Street to No. 30-2.

BIBHUTI BHUSAN.

I next take the case of Bibhuti Bhusan. He made a confession to the Magistrate after due warning and did not withdraw it till the trial began. He states that he took part in the 2nd attempt on the L.G. and describes the making of a hole by the side of a bridge for the mine, but the mine was taken away as the L.G. did not come. He also admits taking part in the 3rd attempt, while he stayed with Profulla and mentions hearing the explosion. The reason he gives is that the Mahomedans oppressed the Hindus at Jamalpore and Comilla and he learned that this was done on behalf of the English. His statement is supported by Barin's who mentions him as taking part in both attempts, or by those of Upen and Ullasker who mention him in connection with the one

at Kharagpur. Ullasker also speaks of him as one of the actual workers.

Ex. CLXXXIII is a postcard found in the garden, it is addressed to Bibhuti Bhusan Sircar, 166, Bowbazar Street. This is the address of the National College. It is dated 10th August, 1907, there is nothing of importance in the contexts.

Ex. 379 is a dictionary with his name in it found at No. 15. There is of course no direct evidence that it is his, but he is said to have been seen at No. 15 and it is to be noticed that he made his confession in Bengali and when questioned to him he also spoke in Bengali.

Ex. 1422, a book, "play-book of science" and Ex. 1428, a book, "Essays on Social Questions," both found in the garden, bear his name.

In Ex. 932, which is an account book of students, found at the search of 41, Champatola 1st Lane, the *Yugantar* Office, on the 1st July, 1907, the name Bibhuti appears four times. It appears there was a students' mess at No. 41 as well as the *Yugantar* Office. Purna Chandra Lahiri, who conducted the search, also says that he found him there. Against Lahiri's evidence is the fact that he told the Magistrate that he did not know Bibhuti's name when identifying him, whereas in cross-examination here he stated that he came to know it at the time of the search. It is possible that Lahiri may have learned it then and forgotten it, but in that case one would have expected him to say so and not to say that he did not know his name.

Again the name Bibhuti appears on the back of Ex. XL 12.

The prosecution also suggests that it was he who ordered the large iron tank found in the garden. Witness No. 72 who is a partner in the firm, and was present when the order was given, says he cannot identify the man who ordered it, but admits that he did identify a man before the Magistrate and that Bibhuti is like that man. The witness is evidently concealing his knowledge though even in the Magistrate's Court he did not identify Bibhuti as the man for certain. The order was given in the name of Upendra Nath Sarkar. It is curious that another witness,

No. 60, says Bibhuti is like a man who paid rent for Sil's Lodge and called himself Satyendra, and that in the garden was found the book Ex. XXXVI, an incomplete copy of the cyclostyle work on explosives, with the name Satyendra Nath Sirkar on the first page. The words "Satyendra Nath" are carefully written, while the word "Sirkar" appears to have been written by a hand accustomed to write the word. In this book the spelling is bad as if the writer was unacquainted with English, and if the prosecution theory is true that this is Bibhuti's writing we have at any rate this much in support that Bibhuti gave his statements in Bengal and that a dictionary with his name was found at No. 15.

The name Bibhuti is also found in Ex. LXXVII. Mr. Bonnerjee says his arguments about Bibhuti's presence in the garden are the same as those for Indu Bhusan's. Bibhuti is in a worse position than Indu Bhusan. For while the latter only admitted coming to the garden in the middle of April, Bibhuti was there from the beginning of November, and it is idle to suggest that a man who had been there 6 months and was considered sufficiently worthy of confidence to take part in two attempts on the L.G. was ignorant of the objects of the society. There can be no question that he was also a member of the conspiracy.

HRISHIKESH KANJILALL.

I next take the case of Hrishikesh Kanjilall. He was arrested on the 10th May at his house in Chatra near Serampur. He made a confession on the following day. While at the Duff College he came to know Upen. He says that he and Upen thought of renouncing the world and becoming Sanaysis. Upen went to Mayabati, while he went to Benares and studied Hindu philosophy and Yoga. After being at Benares a year he went to Mayabati and found Upen there and also met Ram Chandra Prabhu there. Subsequently Upen returned to Chandernagore and accused says "when Lord Curzon trampled over the prayers and protests of the people, partitioned Bengal, I decided to return to Bengal to serve the cause of my country instead of shutting myself up. I was convinced that we must get freedom and that it was

increased and he said he could not go to the jail, that day. This is a good explanation of his not being taken to the jail for anyone with any experience of an ignorant Behari with fever on him will know that it is useless to try to get him to do anything. To my mind it is absurd to suggest that the whole story is false, if a false witness were required it would hardly be necessary to go all the way to Muzafferpur district to fetch him.

The owner no doubt is very indefinite as to the date, but it must be remembered that he too is an uneducated man and was being examined 15 months after the alleged occurrence. When examined by the police the facts were more fresh in his mind though even then there had been an interval of some months. As regards his not being able to say when other people hired his carriage that is just what one expects from a man of his class. He has sufficient intelligence to know that if he is not very certain in guesses he will be further cross-examined, so to avoid the difficulty he feigns complete ignorance. However, there is the uncertainty on his part about the date and if he and the driver refer to the same incident, which presumably they do, and if the driver is right about the date and the attempt referred to by Hrishi Kesh is the first and not the second one, the prosecution is wrong in suggesting the date of the 2nd attempt as the fifth November. And yet the dates given must be correct if the L.-G.'s movements are not a matter of uncertainty. In another respect the confession is corroborated. 'The accused speaks of Aurobindo being taken for a lecture to Utterpara a few days before the attempt on the Mayor, and there is evidence that Aurobindo was at such a lecture on the 5th April. Mr. Bonnerji suggests that he was induced to make the confession. It is true that he was kept at Amberst Street on the night of the 10th, but the Inspector Kedareshwar Chakrabarti, who arrested him says that he showed a disposition to confess while on his way to Calcutta in the train. His being detained for the night is explained by the fact that some time was occupied in his making a statement and he wanted to point out certain place. The witness took down the statement at accused's dictation. Ram Sadai was present, but no definite suggestion of any inducement

Ex. 1415 is a book with Hrishī Kesh's name in it, found in the garden. A possible suggestion is made that Upen may have borrowed it and left it there, but the fact of its being there tends to support the confession that he used to go there occasionally.

Further support of this fact is found that his name is in Ex. LXXVI. It is found twice on the first page and under "the first batch to consist of" are the initials H. K.

His initials are not in Ex. 239, but that book is the plan apparently of a piece of line near Chatra, to which I have already referred. Ex. 796, which was found in his house states the number of males in each house between 15 and 50 years of age with their views, whether Swadeshi, Bideshi or indifferent. All are shown as indifferent. No explanation is offered as to what this is and the accused himself refused to answer any questions. On the back of this list is a plan, which the prosecution suggests is the same plan as that in Ex. 239. It has the same kind of configuration and the same relative positions of the river and railway, but there is not enough to say that it is the same. There is, however, this to be said in favour of the prosecution view that the plan refers to Kumarpara and Kumarpara is near Serampur, *vide* witness No. 28.

Ex. 797 is a rough plan with a spot marked, which may be meant for the old C. I. D. Office in Amherst Street. The Office was removed in June 1908.

In Ex. 667 are the initials H. B. in the second list of initials. Mr. Norton suggests that this means Hrishī Kesh Bhattacharji. Witness No. 40, a master at Bhadreswar School, says that he knew the accused by that name and not as Kanji Lall. It is a possible interpretation of the initials, but it is doubtful if it refers to him if he is the man meant in Ex. LXXXVI by H. K. The fact of his being at the garden is also corroborated by the evidence of Satish, Chandī and Naren Mullik. To my mind the case is clear against him also.

In connection with Hrishī Kesh I may briefly state what evidence there is to connect Naren Gossain with the conspiracy. He is said to have been seen at the garden by Sarat Palit and

Sarat Dass, at No. 38-4 by Biswas, Suresh, Sarat Dass, Siba Kali, and Sarat Palit. He was followed to Chandernagore on the occasion of the expedition which ended in the attempt on the Mayor. He bought a revolver from the witness Jotindra Lahiri, which was afterwards found in the garden. Several copies of the Bartaman Rananiti, the Partition of Bengal and the "Matri Puja" Dikhyia were found in his house. These might be explained on the theory that they were sold for profit on commission, if there were nothing else against him. On a copy of the Bhawani Mandir found in his house is the name Barindra Kumar Ghose, above that are three concentric circles and round one is the unintelligible inscription "I have not got augment." Ex. 785-1 and 2 are two counterfoil books of subscription to the *Yugantar*. In one there are seven annas shown as donations, and one sum of Rs. 2 on what account is not shown. There were also found in his house, 21 empty and two loaded revolver cartridges. Then there is the evidence of witness No. 162, who saw him in Hasandanga in the Bankura district, where Naren's father had some zemindari, about April to June, 1907. The witness says he stayed 3 or 4 months and there were 5 or 6 men with him, of whom one was Barin. Another of the men he says resembled the photo (Ex. 3) of Profulla Chaki. Finally there is the fact that after being examined as a witness against the first batch of accused he was murdered in jail by one of that batch and one of the second batch. There is every reason to believe that Naren Gossain was a member of the conspiracy.

HEM CHANDRA DASS.

I next take the case of Hem Chandra Dass. He is mentioned by Barin in his confession as having sold part of his property and gone to Paris to learn mechanics and, if possible, explosives. The date of his leaving appears to have been September, 1906. Then Barin mentions him as joining Ullaskar in preparing explosives and bombs at No. 38-4 where he was living and No. 15. Barin mentions him as having made the Chandernagore bomb in conjunction with Ullaskar and made the bomb which was used at

Muzafferpur. Ullaskar in his confession mentions Hem as making bombs at No. 38-4 and No. 15. He gives Hem the sole credit for making the Muzafferpur bomb, but says he was not present when it was made. He also mentions Hem as one of the regular workers. Upen in his confession says that he knew that Barin, Ullaskar and Hem were engaged in making bombs.

From the confession of Barin and the evidence of witness No. 104 it would appear that he returned to India about December, 1907 or January, 1908. The witness Suresh heard of him in January or February and on the 20th March Biswas got orders to follow him. Biswas first personally suspected him when Barin was followed from No. 38-4 on the 8th April to the garden. On the 10th April Barin, Indu Bhushan and Naren Gossain started on the expedition to Chandernagore from No. 38-4. On the 16th April Suresh followed him to No. 78, Russa Road and again on the 17th when he was carrying something in paper. On the 21st April, boxes and a bag, the bag being similar to the one in which a live bomb was found at No. 134, were removed from No. 38-4 to No. 15.

Siba Kali says that about the 22nd or 23rd April he saw him go 3 or 4 times to No. 15 and once saw him come to No. 38-4 in hackney carriage, No. 366. Sarat Palit states that he saw him come in a hackney carriage to No. 38-4. Sarat Palit gave evidence under great difficulties as he has been suffering from paralysis, which seems to have affected his memory. The driver of carriage No. 366 was called, but went back on the statement which he made to the Magistrate, Purna Biswas fixes the date of this incident and corroborates Siba Kali and the incident was reported to him on the 23rd April.

On the 25th April Barin was followed to No. 38-4. On the 26th April Siba Kali negotiated for a room in the house, he paid for it and got a receipt, Ex. 854. This is corroborated by Biswas who was shown the receipt at the time. The transaction was cancelled next day and the money returned. Siba Kali gave Hem Chandra a receipt for the money and this receipt was found at the search of No. 38-4, Ex. 368-6.

given in Ex. LXXVII, the page of corrections. In Ex. 382 found at No. 15 is the entry "H. D. Khandry, Sara P. O., Midnapur." That was Hem Chandra's address. Exactly the same initial and address are found in Ex. 677, found at No. 134. In Ex. 382 is another entry "38-4 H. D. 26th 5-6 p. m. Hatkhola."

No doubt there is this much in Hem Dass's favour that nothing was found in his house, the possession of which is not capable of innocent explanation. The explanation probably is that he was too cautious or that he had become suspicious and had anything incriminating removed. We know things were removed on 21st April. We also have two letters found in his house Exs. 320 and 327. In the first the signature is illegible and there is no name to show to whom it was addressed. It refers to enquiries by the Police Inspector for one Hem Babu and mentions a Chowkidar coming with a slip of paper on which was written Hem Chander Dutt. This may have been a mistake or a blunder on the part of the police; at any rate it would seem the Inspector had come to Kandru, and Hem had property in Radhanagar. It appears, however, that enquiries were being made by a constable also and as the writer had given the Chowkidar one address and seemed to think his father had given a constable a different one he is writing to warn the addressee. One of the addresses is spoken of as the Shambazar address, which might apply to No. 38-4.

The other letter is clearer. It purports to be written by Hem Chandra's uncle. A mohurrir of the letter has been examined who says that he sent the letter on behalf of the uncle, but adds that the last sentence, which is the important one was his own idea. This last sentence is: "Heard that the detectives are after you. God forbid, be careful. It is better if the constant frequenting of men be a little stopped." The writer explains this by saying he was afraid that Hem Chandra who dealt in imitation jewellery had perhaps cheated someone and so was likely to get into trouble. This no sense, for though some of his letters show that Hem Chandra was learning in Paris to make imitation stones, the sentence about 'the constant frequenting of men' is not explained. These two letters may have come to Hem Dass inde-

for he is the first low caste man who has ever done such a thing. This might be a possible explanation of the sentiment expressed in this letter and in those of his wife: but this hardly fits in with his advice to his wife in Ex. 367 to read the *Sandhya* and the *Yugantar*. It is suggested that this advice is due to a desire that his wife should improve her mind, for it appears that the *Yugantar* was written in very good Bengali, the pleader Jogendra Nath Sen describes its language as "grand." But that does not explain the advice about the *Sandhya*, which the same pleader describes as a vile paper, and it is singular that Hem Chandra should select the two most violent papers of the day as the medium for his wife to attain a knowledge of contemporary events. And in Ex. 368 he says "it is impossible to give you an idea in writing how very anxious I am to return to India specially in her present state."

In his letter Ex. 877 to Deb Dass Karan he speaks of a visit to Krishna Varma's Indian house in London. He speaks of the arrival of the witness's paper *Medini Bandhab* while there. He says all enquired whether the paper was moderate or extreme in views. I replied with pride that of all the papers in India it was the most extreme in views. They were all very glad and I spoke highly of your name and achievements. On this they became more eager to look into the paper. If I had known what was in it then I would not have given the paper. All cried out with rage at seeing the motto of Sanitude on the top of the paper. This refers to the original crest the "British Coat of Arm" and the house made an uproar with expression of contempt. Such your eyes and imagine as if you, who have been a slave all your life, had after living six months in holy Paris, the birth-place of freedom, come to the city of the enemy with a burning sensation in you, contempt and sighs, and had spoken proudly before the servants of the country. The independence of your paper has come out before these people just as the mark of the collar on the neck of the dog in the fable of the lion and the dog. Then he goes on to say that unless the motto on the paper is changed he will boycott it and won't even touch it. Shortly after receiving

been arrested" and that he actually names him in the list. As this argument has been reported more than once I may as well dispose of it here once for all. I take the first sentence to be a general statement, and that it is not intended to mean that so far back as the beginning of 1906, Barin collected the persons arrested in the garden. The second sentence contains a mere statement of fact in answer to the question, who was in the garden. I do not take it to mean that they had been there any particular length of time, and the answer that "they were staying there with us" would apply equally well to a person who had been there two days and to one who had been there two months. Similarly I think the defence has placed too much stress on the word "all" in the sentence "I persuaded them all to give written and oral statements". It has been argued that this means that no one who did not make a statement was a member of the conspiracy. The sentence might mean no more than that he tried to get them to make statements, and we find that in fact a person whom he specially names, Hem Chandra, did not make a statement. Similarly much stress has been laid on Ullaskar's statement as to who were the actual workers; and it has been argued that no one, not in his list, was a member of the conspiracy. I take him to refer to the persons who actually made bombs, used them or entered into arrangements for their use. But there may be many persons, who have joined the conspiracy with a knowledge of its object, who would not come under that category though I repeat what I said before that mere presence at the garden does not necessarily mean participation in the conspiracy.

Paresh is identified as one of the men who came with the cart on the 21st April to Hem Dass's house. There is some discrepancy in the evidence as to this incident. Sarat Palit says that of the two who came with the cart, one who looked like a Mad-rasi took it to No. 15 when it was loaded, the other man going off in a different direction. This other man he identifies as Paresh. He also identified him before the Magistrate. Shiba Kalh says that he did not follow the cart to No. 15, but he followed the other man, who came out of 38-4 half an hour after the cart

probable, for five letters or post cards and an envelope, all addressed to him, were found in the garden, (Exs. LXXXI, CLIII, CLIV, CLV, CLXII, CLXXVI.) These range in date from the 6th to 21st April. In Ex. LXXXI was found the letter LXXX and though, as I have stated before, it appears that the letter does not belong to the envelope. Counsel for the Crown contends that Paresh may have put it there to keep it. That is possible, but in the absence of other evidence against him, I would not lay too much stress on that as in a search in which a huge number of things were found in a small room, it is possible that a letter was slipped into an empty envelope, though I have no reason to think that the officers conducting the search would not keep things as they found them, especially in the matter of letters. It is of course possible that the letters were all brought there at the same time. They are all addressed to No. 44-3, Harrison Road. One of the instructions in the book, Ex. 239, under the head "11th January and onwards" is "visit 44-3 daily." No. 44-3 is a mess, and in view of this entry it is very likely that Paresh was attracted to the garden before the last letter, which would not have reached Calcutta till 22nd April, especially when we find him going to No. 38-4 and No. 30-2 on the 21st.

The letters, Exs. CLXII and CLXXVI are pathetic letters, one from his mother and the other from his father complaining that they can get no news of him. The mother says you ought not to wander about from one part of the country to another. You left home a few months ago." His father begs him to come home to help to manage the property. He says. "There are a good many swadeshi people like you but none wander the whole of the year without purpose or intent after relinquishing business and allowing all his property to fall to ruin." He says that he himself is getting old and cannot manage his property without help.

It may be that Paresh was the man selected to visit No. 44-3 after he joined; for it is the case of Krishna Jiban and Naren Bakshi that he took them from there to the garden and they appear to have come to Calcutta about the 12th April.

Paresh's connection with the garden is also shown by Ex. C headed "Important notes on drill, P. C. Maulik, Rangpur." This is the book which I referred previously containing rifle, bayonet and firing exercises, etc., and words of command. It also contains a formula for an explosive and for a detonating mixture, with instructions how to make the latter; and in this book we find the names of Satyendra Nath Bose and Hem Chandra Dass. The contents of the book suggest the object of his presence in the garden.

In Ex. LXXVI his name is found three times in two of the lists and just below the entry "Barin to teach him the mechanical part of the thing" in conjunction with Profulla.

In Exhibit 239 we also find the initials P. M. in the list and again in the 1st circle. Also in Ex. 667 we find the initials. This Exhibit having presumably gone from No. 15 we have this item to support the evidence of his presence there, and Chandi Charan and Holal, as well as Siba Kali speak of seeing him there.

Ex. 263 is a note book on one page of which is what looks like a draft telegram from Ghose to Ishan Chakrabarti's Deshi Dokan, Rangpur: "wire to Chaki, Paresh, Satish, Barin and send them immediately." The same addressee is found in a post card advertisement of the Rangpur District Conference, found at the garden, addressed to Profulla Chandra Chakrabarti, c-o. Ishan Chandra Chakrabarti, Rangpur. This draft telegram appears to be in Barin's handwriting. The word "Chakrabarty" is identical in writing and spelling with the same name as in voucher No. 78 in the "Chattra Bhandar" book, which is by Barin and is undoubtedly in his writing. If Paresh in the draft telegram is this Paresh there is another point of connection with Barin. The evidence most unmistakably shows his connection with the garden, No. 15 and with Hem Chandra Dass, and there can be no doubt that he was one of the members of the conspiracy. The book on drill cannot possibly be explained on the ground of a desire for physical culture.

SISHIR KUMAR GHOSE.

I now come to the case of Sishir Kumar Ghose. He was arrested in the garden. Ex.LXXII is a letter to a Sishir Babu, found in envelope LXXXIII addressed to accused at 30-2, Harrison Road. Accused admits that the letter is to him. It is from a man, Jogesh, enquiring about an appointment, which is evidently that of Naik to Krishna Jiban, the accused. The letter mentions Indu. The letter and envelope were found in Ex. LXXVI.

Ex. LXI is a blotting book found in the garden, in this book were found Exs. CXII and CXIII. The former is a telegram form on which are the timings of trains from Bombay to Vasco de Gama. The latter is a letter found in the envelope Ex. CXIV addressed to Sishir, c/o. Manindra Nath Ghose, 47, Harrison Road. The Postmaster shows that it reached Calcutta on the 25th March. Sishir denies any knowledge of his letter or of the writer. Ex. CXV is a letter from one Upendra Nath to one Sishir, asking him how he likes the climate of Bombay, and mentioning a precious letter from Sishir in which the latter had written a word which Upen could not read, "Vascoo" or "Vasco." This letter Sishir denies knowledge of, saying he did not know Upen before the arrest.

Ex. CXVII is a letter, dated 11th April, to "Mr. Despande" saying he is about to start for Ahmedabad and wishes to see him. The letter was evidently sent by hand, for there is an answer on it from Despande. This letter Sishir denies knowledge of, but his counsel relies on it for him. Ex. CLXXXII is a post card to Upen from R, at the *Indu Prakash* office, Bombay, dated 22nd April, mentioning that Upen's two friends were with him, that they had been disappointed at Ahmedabad, and had wired to Barindra Babu for money. He adds that if money cannot be sent they need not be anxious. The suggestion that R is Ram Chandra Prabhu is probably correct for he was the Editor of the *Indu Prakash*. Sishir admits that he wrote to Barin, who is related to him, for money and money was sent to Sudhir, vide Ex 846, a money order for Rs. 20 addressed to him at 44-4, Jabji Buildings, Bombay, an address from which we find other letters

from Ram Chandra Prabhu. This was sent on 23rd April, evidently in answer to the wire and reached on the 27th. Sishir admits receipt of the money, but says he does not know the remitter Charu Charan Roy Choudhori. The acknowledgment for the money was, however, found in the garden and in Ex. 231 the name of the remitter being Charu Chandra Rai Choudhuri, address 32, Muraripukur Road. The receipt given to the remitter by the post office is Ex. LVI. As this was found in the book Ex. LVI it is quite clear then that the money was sent by or on behalf of Barin or Upen from the garden.

Ex. CLI is an envelope. Ex. CLII I have already referred to. The envelope is addressed to Sishir Kumar Ghose, 44-4 Jabji Buildings, Grant Road, Bombay. Sishir denies knowledge of the letter, he denies that he was staying at that address, but says he was staying at a hostel in Grant Road; he then says he does not remember if it was No. 44-4 Taken in connection with the previous letters and the money order there cannot be the least doubt that it was to him. There are two letters on one piece of paper, the first is signed Indu. The writer says "B. Babu asked me to send Rs. 20 and I send that amount to-day." The Calcutta post mark on the letter is 23rd April, *i.e.*, the day on which the money order was sent. The letter goes on "moreover he (*i.e.*, B. Babu) said that if you wish to go to Charu Babu's place then Charu Babu's address can be sent to you" In Ex. CXV Upen in writing said "I have to-day written to Ram Chandra." The letter CLXXXII from B. to Upen mentions receipt of a letter, "I showed your letter to Bari," evidently Barindra,— "I think it best to procure the address of Charo Bahu and then go to his place, but it is better to remain at Bombay so long as his address is not got." Then he refers to Biren having gone away, without having an address and suggests he has gone to Baidyanath, and there is evidence that Birendra Nath Ghose, the accused, did go to Baidyanath, and then says "these young folks follow only their own whims," evidently referring to youngmen in the garden, and writing us if Sishir knew about young men in the garden. And in connection with Charu Babu's address I may remark that on

the cover of Ex. CLXXXIV a Bengal Nagpur Railway guide, found in the garden, is what appears to be a draft telegram from Ghose to Krishna Rao Deshpande, "wire Charu's address."

The 3rd letter on Ex. CLI is to Sishir and is signed Chaki. Witness believes this to be in Profulla's writing.

It is rather a serious coincidence that while Indu says he is sending Rs. 20 the money order should go as from Charu Chandra Roy Choudhuri, while Indu Bhusan signing as witness to Ex. 1006, should also sign as Indu Bhusan Rai Choudhuri.

Again in the first letter in Ex. CLI Indu is asking for the maps, which were with the addressee. Mr. Ghose says that this refers to Ex. 246-253, district maps, which Sishir had brought for Upen and suggests they were wanted for the preaching in the garden. He suggests that Indu cannot refer to things in the garden. But Sishir himself says he did not know Upen before. And in their connection it is singular that the name Sishir appears on the back of Ex. XL to include Sagardari, the village from which Sishir comes. This last map is evidently intended for an attack on a *kachari* at Dhandia, distances from both Sagardari and Jainagore Bazar to Dhandia are given. A route is shown from Sagardari to a ferry ghat just opposite the *kachari*. Another route is shown from a steamer ghat past the *kachari* to the bazar. Details are given of the number of shopkeepers in the bazar and people in the *kachari* which appears to consist of two buildings. The large plan of the building shows relative positions of the river and bazar, and it is evidently the plan of the building which is marked in the other part of the map with a cross. The documents above referred to show connections between Sishir, Barso, Upen, Indu and Profulla Chaki. The documents already refer to this Sishir, and it is a singular coincidence that he should be in touch with four men bearing the names of four of the most prominent members of the conspiracy. Not only is it clear from the contents of the letters taken in conjunction with the money order that this Sishir is the one referred to, but it is his own case that he went to Bombay about the end of the first week in April.

There is evidence of the shadowing witnesses that he was seen at No. 15 by Chandī, and at the garden by Satish and Suresh. They must be mistaken for it is not likely that Sudhir returned to Calcutta between the 11th April when he was starting for Ahmedabad and the subsequent date about the 20th when he was in Bombay. And as he received the money order in Bombay on the 27th he could not have returned before the evening of the 29th at earliest.

Witness 165 also says he saw him in the garden. It is suggested that he said in the Magistrate's Court that he saw the men in the garden 10 days before the arrest. I do not understand him to mean on one occasion 10 days before the arrest, but that he went to the garden on some 10 occasions, for he says in this Court that he had been going there many times in the cold weather. When pressed in cross-examination he reduces the number to five instances, but he is obviously very uncertain about the dates and probably does not give more instances to avoid being questioned about details. He says he saw Sishir on the last occasion, the night before the arrest, but this occasion he first puts at about the 8th or 9th April and then about 10 days before the arrest. It does not really much matter whether he was seen in the garden during April or if he can be shown to be connected with it before that. I have pointed out that Upen writes to him as if he knew about the boys. The name Sishir appears three times in the list in Ex. LXXVI. It again appears under the heading of the first batch. If these entries refer to him, they could not have been made at the end of April, in two days. In Ex. 239 we have the initial "S. G." twice in the list of initials. This rather suggests two individuals. The initials appear again under the 1st circle and the 3rd. The third circle included the abbreviation "miss," and it is suggested by the prosecution that Sishir was one of the missionaries. The suggestion is rather borne out by the latter entry, "Sishir's report to be received and his boy brought here."

In Ex. 201 the initial "S. G." appears against the 18th and

In Ex. 652 there is an item "Sishir going to Chakra Rs. 15" There is a station Chakradharpur in the B. N. Railway. I have already pointed out that Ex. 256 shows the distance between certain stations on the B. N. Railway. This slip of paper on the back of which is "M. N. Ray, 30-2, Harrison Road" was attached to Ex. 1239, which is a notice of the meeting to be held at Chandernagore in April, the notice being dated the 3rd. These two were found in a street, Ex. 255, marked "S" found in the garden, and claimed by Sishir at the time of the search. Sishir denies claiming it, but there is no reason to doubt the evidence. The reason that he gives for his letters being addressed to No. 30-2, is that Barin gave him that address and Barin was to forward letters that came for him there. There is no particular reason why he should deny Ex. LXXXII ; there being nothing compromising in it beyond the mention of Indu, yet he does so and says that some one else must have taken it to the garden and opened it. I have already pointed out that No. 30-2, seems to be connected with the conspiracy and that may be the reason why Sishir will have nothing to do with No. 30-2. And his denial of the other letters referred to, suggests that he realised that they required some explanation. I forgot to mention that in Ex. CXV Upen asks Sishir to let him know what arrangements he will make and says he will deal with other topics on getting a reply. And Birendra Nath Ghose writing to Upen on the 30th April (Ex. 896) adds a letter to Sishir on the same paper. He evidently expects to find Sishir in close touch with Upen, yet Sishir says that it was quite accidental that he found his way to the garden and Biren must also have known that Sishir was then on his way back. He must either have been informed that Sishir and Upen would be in close contact or have expected that Sishir would go to the garden.

It also appears that Sishir was in some way connected with the *Yugantar*. He was a school-mate of the accused Sudhir, and the brother of the latter says that he wrote to Sudhir expecting to find him with Sishir at the *Yugantar* office. And the letters themselves, Exs. 825, 826 bear out the fact that witness expected

to find Sudhir at 41, Champatala 1st Lane, and his whereabouts were to be got from Sishir. Now in April and May, 1907, the *Yugantar* was both printed and published at No. 41. At the search of the office on the 1st July, 1907, a students' mess account was found, in which Sishir's name appears twice.

In Ex. 1262 Sudhir writing at the address 30-2, refers to Abinash Babu. This might or might not be the accused Abinash.

Finally we have the fact that he was bound down to keep the peace, in the Mymensingh District in 1907. In that case about the time of the *Yugantar* disturbances, apparently after the breaking of the image of a goddess by the Mahomedans, he was found in company with Indra Nath Nandi, one Narendra Nath Bose and two local men, who were National volunteers, wandering about in Jamalpur disguised as Mahomedans and one or more of the party were armed with revolvers. This was the finding of the Magistrate. The suggestion is that he went in the entourage of Babu Surendranath Banerjea and stopped at Jamal-pore to see the broken idol. The Magistrate then disbelieved that defence. I don't know whether Babu Surendranath Banerjea went to Jamalpore on his way to the Mymensingh Conference, but it is not the shortest way from Calcutta. In this connection reference might be made to the concluding sentence of Bhibuti Bhusan's confession. It will also be remembered that the *Yugantar*,—and

February, he was evidently a worker and not a mere novice vide Upen's book (Ex LXXVI) Barin's (Ex. 239). The accused Sishir was in touch with four of the most dangerous men of the society. The correspondence with Upen suggests that he knew something about the garden and evidently he was expected back there. As against that we have merely his own statement that he went to Bombay for an innocent purpose. He is receiving letters at an address connected with the conspiracy. He appears to have had some connection with the *Yugantar* and his disposition is shown by the fact which he played at Jamalpur. I do not think there can be any reasonable doubt that he was also a member of the conspiracy. I may note here that I do not take into consideration Sudhir's statement as against Sishir, because it is not in terms of a confession so as to make it admissible under sec. 30 of the Evidence Act against other accused. And to avoid repetition I may state here that the statements of Narendra Nath Bakshi, Birendra Nath Ghose and Krisbna Jiban Sanyal not being in term as confession cannot be used against other accused than themselves.

NARENDRA NATH BAKSHI.

I next take the case of Narendra Nath Bakshi. He was arrested in the garden. He made a statement to the Magistrate on the 5th May in which he said he had been at the garden 22 or 23 days. Barin took him there telling him there was an *asram* where he could stay for a month during his school holidays, while there he was reading sacred books and English books. Before he went there he was at a students' mess in 44-3, Harrison Road. He subsequently withdrew his statement before the Magistrate and again formally in this Court, but his Counsel relies on it.

Exs. 207-6 and 1419 are books found in the garden. They bear his name, there is nothing harmful in them, and as he says he stayed in the garden they would naturally be there.

Ex. 394 is one of the incomplete copies of the cyclostyle work on explosives. It bears his name N. Bakshi. The copy does not at all appear to be in the same hand : but the name appears

to find Sudhir at 41, Champatala 1st Lane, and his whereabouts were to be got from Sishir. Now in April and May, 1907, the *Yugantar* was both printed and published at No. 41. At the search of the office on the 1st July, 1907, a students' mess account was found, in which Sishir's name appears twice.

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For the Crown it was also argued that Purna Biswas said that Sarat Palit reported having seen Sudhir at the garden on the 18th April. But Sarat Palit himself did not say so. Therefore Biswas's statement cannot be taken as corroborative evidence. Sarat said that he reported to Biswas on the 17th that a Sishir Chandra Ghose was a member of the society and he did not identify the accused Sudhir in the Magistrate's Court. This is in favour of the accused as suggesting there was another Sishir, though Palit's information as to the name may not have been correct.

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Ex. 394 is one of the incomplete copies of the cyclostyle work on explosives. It bears his name N. Bakshi. The copy does not at all appear to be in the same hand : but the name appears

to have been written by the same hand as the name in his books there is a distinctive flourish about the N.

In XL. 12 appears the name of Mahadebpur. Counsel for both prosecution and defence have taken this to be the name of his village. He himself does not say so: he gives the name of his village as Enayetpur, and this is borne out by Ex. 1419. Mahadebpur is, however, the thana in which Enayetpur is and is apparently also the postal office for that village.

In Ex. 667 are the initials N. B. next to those of K. S. It is suggested there are Naren Bakshi and Krishna Jiban Sanyal. The two were at school together at Giridih and appear to have left Giridih on the 11th or 12th April. The prosecution also refers to the fact of his having gone to 44-3, a place to be visited "daily" according to the instructions in Barin's Book.

Now it appears that Krishna Jiban koew Paresb. Krishna Jiban says he and Naren came together to No. 44-3 and Patesh took him and Naren to the garden. Krishna Jiban, however, mentions staying at the mess only 2 or 3 hours, while Naren says two days. The difference in the two statements may be explained without difficulty. Paresb may have gone first and perhaps not entirely succeeds in persuading Naren and Barin may have succeeded in persuading him. But because they had the misfortune to go to a mess where emissaries from the garden visited daily; it does not follow that guilt is in any way fixed on them. The mere fact of Mohadebpur being in Ex. XL-12 is not sufficient to fix criminality on Naren or even to connect him with the map especially when in Ex. 382 we find the initials S. N. B. connected with Enayetpur, Mohadebpur P. O

The initials in Ex. 667 it will be noted are in the record of the two lists. It is quite possible that this is a list of novices. The initials are not found in the first list which to a large extent corresponds with the list in Ex. 239. Nor are the initials or names to be found in either book LXXVI or 239, which probably contains list of actual workers.

The most damaging thing against him is the Ex. XXXVI-4 with his name in it. It does not, however, follow that he wrote any part

of the contents. Assuming that he did the highest presumption that could possibly be drawn against him is that he knew preparations were being made for the dissemination of knowledge of explosives and that he might reasonably be expected to enquire the reason. I do not think it sufficient to affect him with knowledge necessary for a conviction under sec. 123. There is nothing to show that he was ever present at the actual preparation of a bomb or that he knew anything of bombs being made there or arms concealed.

Holes were found in two trees in front of the house which may have been bullet marks and white potashes were found on the trees which, the prosecution suggests, were fainted as targets, but which the defence suggests is fungus. All that can now be seen on the trees is a white fungoid growth which is in patches all over the tree, but it does not follow that what we see now is what was then taken to be faint for a target. It is not a matter of moment whether the patches were due to faint or fungus; in either case there would be an efficient target. No one ever heard the sound of firearms there in April, and the only thing that might have attracted attention was an empty revolver cartridge lying on the cement platform which might easily have escaped notice.

Naren is also said to have been seen at No. 23 and No. 15, at the former by Satish and at No. 15 by witness No. 214, a postman. Neither of this was mentioned by him at either place before the Magistrate. Witness No. 114 there named Krishna Jiban as the person seen at No. 15. This may be an honest mistake for the features of the two are somewhat similar. I do not think the evidence against Naren sufficient to convict him of the offence with which he is charged.

KRISHNA JIBAN SANYAL.

I take next the case of Krishna Jiban Sanyal, as his case is connected with that of Narendra Nath Bakshi. He was arrested at his home in Kausal, Maldah, and made a statement to the Magistrate on the 16th May. There examined by the Magistrate he said that when he made his statement he did not know he was speaking to the Magistrate, which is false as Mr. Birley warned

him. He also said that it contained some mistakes and that all after the statement that he studied at Giridih up to the month of Baisakh was false except the fact that he¹ went to 44-3, Harrison Road. His Counsel, however, relies on his statement. He says that he read in the Rajshahi Collegiate School up to September, 1906, and that he was expelled with three other students because with a very large number of students he absented himself from the school, when the Lieutenant-Governor, Sir Bampfylde Fuller, was going to visit it. Then Naren and he went to the National School at Giridih and after appearing in the Examination in Baisakh he came down to Calcutta with Naren, having previously written to Paresh. He went to No. 44-3 where he stayed for 2 or 3 hours and then Paresh took him to the garden. He stayed there day and night for 15 days. He states that Barin used to read the *Gita* to him and also about the Russo-Japanese War. Upen read the Upanishad to him, and on two occasions Ullaskar lectured about explosives. He says the object of the school was to learn *Gita* and the Upanishad "for the strength and good of the country." He saw a Guru there, and on one occasion went with Nirmal to hire a house for their men.

A number of books of his were found in the garden. His name is in them and the name is written in the same hand as the examination-papers of his (Exs. 1046 and 1047), which have been proved. Also in the examination paper, Ex 1086, the first answer is apparently an account in his language of the first story in the book Ex. 1420. It is unnecessary to discuss the writing on these books in detail, they were produced to prove his stay in the garden and admitted that he was there for about a fortnight.

Ex. 383 is a note-book with his name in it. The name is undoubtedly written by the same hand as the examination-papers : this book was found at No. 15.

Ex. 924 is a letter by him to Upen. It was intercepted by the Post-master. He is asking Upen to arrange for a Naib for him quickly. Ex. CLI & LXXXII deal with the same subject. It is suggested from these that he knew Sishir, but it does not follow. Jogesh who is applying for the appointment is a Khulna man, Barin

and Indu Bhusan who interest themselves in the matter are Khulna men: Sishir comes from the neighbouring district of Jessore. Krishna Jiban had met Barin at the garden and probably also Indu Bhusan. Sishir was apparently away and it does not follow that; because Indu asks Sishir to help him. Krishna Jiban knew Sishir. Upen might be interested in the matter and would probably be glad to get a creature of his own to take a post where he would be in a position to spread his doctrines.

It is also sought to establish a connection with No. 78, Russa Road by means of the letters Ex. 853 & LXXX. Assuming that the signature Santi in the latter letter refers to the Santi Babu in Ex. 853, and assuming that the letter was written to Paresb and having the admitted fact that Paresb knew Krishna Jiban it does not follow that the latter had anything to do with No. 78.

The maps Exs. XL-4 XL-5 XL-7 XL-14 and 640 included the village Kausal, and in Ex. XL-4 are the words "our homes" with the initials—K. S. P. B. K. S.—might stand for Krishna Jiban Sanyal. In connection with these should be read the list of questions to which I have already drawn attention, referring primarily to the Maldah maps. Krishna Jiban is the only one of the persons accused who hails from Maldah. 39 copies of the *Yugantar* were found in his house, but subscription to the *Yugantar* does not imply participation in the conspiracy though the writings encourage rebellion and would be the more dangerous to one pre-disposed to it.

In the book Ex. CXXIV-10 is the inscription—"this book belongs to Krishna Jiban Rajbidroh (i. e., rebel), 1908."

He was seen by the shadowing witnesses at Nos. 15, 23 and 4, as well as at the gardeo. Nos. 23 and 4 were places which persons from the garden were seen to visit frequently. The facts against him then are his admitted stay in the garden, his being seen at No. 15 which is supported by the finding of a note-book of his, and at other places which persons from the garden frequented, and the letter, Ex. 924, to which I have already referred to in respect of one matter, but which is important for another, and his confession. There is also the incident of the 20th

April. Mr. Ghose argues that he is of a bragging spirit and that is why he calls himself a "rebel" and that the entry in the book "we have become rebellions" might refer to his expulsion from school for absenting himself during the L.-G.'s visit. I do not lay too much stress on these phrases, which may be due to the wild talk of an excitable and rebellious boy.

With regard to the lectures by Barin on the Russo-Japanese war, Mr. Ghose suggests that the subject was an interesting one and the boys would listen without understanding the object, and that the lectures by Ullaskar on explosives were merely to explain the use of them by the Japanese. This explanation appears to me to be too far-fetched, especially when we find Krishna Jiban going to No. 15.

It is suggested that the identification at No. 15 is not reliable. Mr. Ghose, however, took pains to point out during cross-examination that Krishna Jiban was a particularly good looking boy and as Naren Mulik saw him at No. 15 and he also saw him in the garden ; where he admittedly was, there appears no reason to doubt the identification. His being there is supported by the fact of his book being found there, though that fact is also capable of another action.

The incident of the 20th April is that Krishna Jiban was seen by Suresh and Satish to accompany Upen and Nirapada to the Bridge, after which he turned back and they met the Madrasis who were then traced to No 15. In cross-examination it was attempted to show that this was all false, but in arguing the case it was dropped, and Mr. Ghose suggested that the fact that Krishna Jiban went back shows that he was not expert in the confidence of Upen. The fact that Krishna Jiban was only seen a short time in the garden is in his favour as raising the suggestion that he had not been fully acquainted with the objects of the society. But Ex. 924 contains a very significant passage. He says since return home he has been uneasy and asks Upen to release him and not put him to trouble and he threatens to run away. This bears out the idea that he knew more about the objects of the society than one would expect in the case of a novice and there is

a possible explanation in the fact that he had shown himself to be of a rebellious nature and had been expelled from school for an insult to a high official; and therefore possibly in his case it was felt that there was less necessity for a preparatory course of training. The letter in conjunction with the fact that the lectures on explosives were for the strength and good of the country and with his presence at No. 15 indicate that Krishna Jiban knew the objects of the society and identified himself with them. He was also therefore in the conspiracy, though there is this much in his favour that Ex. 924 shows that he found he had gone too far and wanted to cut his connection with it. Wiser ideas seem to have come to him as soon as he got away from his vicious surroundings, or possibly he left the garden on account of his doubts. And his short stay in the garden and desire to leave the conspiracy are points to be taken into consideration in giving sentence. A foolish hot headed and irresponsible boy led into trouble by his elders he has probably been more sinned against than sinning, was Sachindra Kumar Sen. The only place connected with the conspiracy at which he was seen is the garden. He admits being there for 7 or 8 days and says that Upen who is the Guru of his family took him there to teach him Sanskrit. He wanted to be a *Kabiraj*. He admits being seen there by the witness Dinabandhu, who says that he was then told the same thing.

In Ex. 231-2 is his address both of Dacca and Chittagong. In Ex. XXXVI one of the incomplete copies of the cyclostyle work on the front page is the name S. K Sen. This may or may not be his. He denies it.

In Ex. 201 is an entry against 28th February "S K. for Soap." This may or may not refer to him.

In Exhibit 667 in the first list of initials are the initials S. S. They may or may not be his, but I think it doubtful whether they are; as I said before the list is probably one of workers, and it is hardly possible that he, a boy of 15, should have been admitted to the band of workers. A boy of his years would probably require a long training first.

In regard to his knowledge the same considerations apply as in the case of Narendra Nath Bakshi. Counsel for the Crown lays much stress on the entry in the note-book Ex. CLXV II, "Heaven helps those who help themselves :—Japan did its best to collect money on the war expenses at the time she was favoured by the discovery of gold fields." Accused explains this by saying that Upen was telling him about the Russo-Japanese War and he told him this as an example, of how Heaven helps those who help themselves, and he was touched by it and wrote it down. This is a very reasonable explanation and it is exactly the method which one might expect Upen to use in dealing with a young boy tell him a motto, illustrate it with a story and tell the boy to write it down so as not to forget it, and when the moral to be drawn was thoroughly inculcated it would be put to a perverted use.

There is not sufficient evidence to connect the accused with the conspiracy or even to hold him guilty of the charge under S. 123 -

A Nalini is mentioned in letter Ex. 638-1 as staying with Sushil. The Nalini in Ex. LXXVI might be this man, in one place in that book the name comes next to the name of Sushil. The name Nalini also appears in Abinash's note book, Ex. 311. There is nothing to show it is the accused. On the other hand, in Ex. 932 the "Yugantar" in the students' account there is the name Nolini Kanta Rai; so it is quite likely that that is the Nolini referred to in Ex. 311.

He is also said to have been seen at No. 15 and at No. 4. There is no evidence with whom he was seen at No. 4, it is a book-shop and his presence there may be perfectly innocent. At No. 15 he was seen only by Sarat Dass, and in the absence of corroboration I am prepared to accept his statement.

Ex. 371-4 is a pamphlet on the imprisonment of Bipin Chandra Pal. It was found at 38-4 and bears the name Nalini Kanta Sarkar. This is written in the vernacular and there is no vernacular writing of his, with which to compare it. He denies knowing this Exhibit and says he did not know Hem Dass before the arrest.

He is one of the accused, who had the good sense to answer questions. For though, as I said before, there is no compulsion on the accused to answer questions, explanations given by an accused personally are more valuable than possible suggestions made by his counsel for him, and it is not perhaps sufficiently realised that straightforward answers to the Court are far more likely to impress the Court than excuses invented for an accused.

There remains only the fact that he was convicted under the Police Act for taking part in a political procession in Rangpur. That may have been nothing more than a foolish piece of school-boy bravado.

There is no sufficient evidence to connect him with the conspiracy or to affect him with knowledge of the existence of a design to wage war.

PURNA CHANDRA SEN.

The case against Purna Chandra Sen is that he was at school at Tanluk with Khudiram Bose, that Khudiram sometimes stayed

at his house, that he sold things at the Midnapur Chhatra Bhandar in which Satyendra Nath Bose was the prime mover along with Nirapada, that in the latter part of 1907, about September, he ran away from home and was staying in Calcutta first with Abinash and latterly at 19-3, Chhoku Khansama's Lane, which was Aurobindo's house, that he again ran away from home in April 1908 and was arrested in the garden. He is also said to have made a speech at Tamluk on the occasion of the release from jail of one Nilmani Dass, the Sebait of a temple, who had been convicted for Swadeshi picketing. It also appears that he was the Tamluk agent for the sale of the *Bande Mataram*, vide Ex. 1067.

As regards his connection with Khudiram, the evidence is not very satisfactory. It is that of witness No. 127, who call himself a pleader's mohurrir. This same witness speaks of the speech on the occasion of the release from jail of Nilmani. The father of the accused says that this witness was convicted of theft and imprisoned. The witness admits that he was convicted, but says he got off on appeal. It is suggested that it could not be as the trial was a summary one. The witness insists that he was acquitted on appeal and says he does not know what a summary trial is. This is from a pleader's mohurrir. He is probably a tout. In any case I do not feel disposed to rely on his evidence.

In regard to accused's absence from home in September, it is suggested that he went to the house of his brother in the Nadia District. Now his father sent him Rs. 2 by money order on the 16th September, vide Ex. 1461 addressed to him c/o Abinash Chandra Bhattacharji, Manager, "Yugantar" Office, 28-1, Mirzapur Street. The receipt on the other side is by "Dhatta" for Purna Chandra Sen. The father says, his son told him on his return home that he never got the money, and he says he did not trouble to make any enquiries about it as the sum was a trifling one. The father gives a very foolish account of how he came to address this money order to 28-1, Mirzapur Street. It is that same person, he can't remember who. It was suggested that Purna might be found either at the Chhatra Bhandar office, or at the "Yugantar" Office, these being the places where young men who had nothing

to do go and the father left it to the informant to fill up whichever address he thought fit in the money order. The father is not a trustworthy witness. He was in a very difficult position being called as a witness against his son, for before the Magistrate he stated that certain entries in his diary did not exist when the police took it and suggested that they had been forged, an imputation which he has withdrawn at the trial. However, whether Purna went to see his brother or not, it is clear that his father was expecting a money-order addressed to c/o Abinash to find him.

Then he says he got a card from his son on 1st December giving the address 19-3, Chokn Khansama's Lane. There was discussion as to whether the entry in the diary, which was shown to the witness meant that the card came from that address or that that would be Purna's address. The witness said it meant the latter. To my mind it is immaterial which it was. The point is to connect Aurobindo. In fact Anrobindo was not there at the beginning of December, he was at Deoghar. ?

There is nothing to show that Purna was in Calcutta continuously from September. On the contrary, his father says he took him to Waltair in the interval.

In any case assuming that Satyendra, Abinash and Aurobindo were members of the conspiracy and that he was in personal contact with them, that, added to the fact that he was for four days in the garden at the end of April, will not prove him a conspirator. He was a young good-for-nothing beyond the 'control of his father and possibly just the kind of boy the conspirators would like to get hold of. But his name is not found in any correspondence, nor in any of the books in the garden or elsewhere. No doubt it is said he was seen at Nos. 4 and 23 also ; he may have gone there with other persons from the garden, but without guilty knowledge. The facts against him no doubt raise suspicion against him, but do not furnish absolute proof of his complicity.

BIJOY KUMAR NAG.

I next take the case of Bijoy Kumar Nag. He was arrested in the garden. He says that at the end of the March he was going to Benares to read Sanskrit. He met Barin, whom he knew before, and Upen at the Howrah Station. He told them he was going to Benares, where his grand-father lived to study Sanskrit. Barin then told him that Upen had a *Tol* and suggested he should read with Upen. He said he would go to Benares and see if that was not convenient would return. He stayed at Benares and about 15 days later returned and again found Upen at Howrah and asked if he might join him. Upen gave him the address of the garden. He went home to Khulna but returned about 8 or 9 days before the arrest and read at the garden.

A book Ex. 260 which, it is suggested is his, was found in the garden. He denies that is his. Two school-books Ex. 741 and 742 found at his house have been produced for comparison of writing. There is some similarity between the initials on the contents page of Ex. 741 and the initials at the end of the Vernacular writing in Ex. 260, but in both cases it is a scrawl and with so little material it is impossible to say the two are in the same hand though his presence here makes it very probable that Ex. 26 is his. Not that there is any harm in Ex. 60, it merely contains a few good resolutions. The only point in it is that there is an address written, we do not know by whom, *viz.*, A. K. Ghose, 47, Harrison Road, which is the address at which Birendra Nath Ghose was apparently expecting letters, vide Ex. 896. In Ex. 667 are the initials B. N. which might apply to him and on the back of the map Ex. XC-12 is the name Bijoy. Then he is said to have been seen at Nos. 38, 15, 4 and 23.

For the defence it was endeavoured to establish the fact that he was at Benares in March through witness No. 61, but he only admits seeing him there early in January. The witness admits that accused's grand-father lives there.

In regard to accused's story, it is a singular coincidence that he should have met Upen at Howrah both on his way to and from Benares.

As regards his being seen at No. 25, I may refer here to an argument advanced by Mr. J. N. Ray for his client, as it applies to other persons also. It was with reference to the watching on 23rd April. Satis and Suresh say they were watching the garden and seeing Barin come out followed him to No 15. They watched there and saw other persons struggle in: Satis says he saw Upen and 4 or 5 others come. Suresh says he saw about 20 of whom he would be able to recognise about 12 or 14. Biswas says that Satish and Suresh reported that Barin, Upen and a few others came. Few is indefinite but could hardly apply to so many as 20. Suresh says that Satish actually made the report while he was there. Obviously the two men would not stand in one place watching No. 15, they would probably move about in as inconspicuous a way as possible. Still it is difficult to account for so large a difference in number. It may be that Suresh having seen so many persons at different times has unconsciously exaggerated the number on this occasion.

Mr. Ghose's argument for Bijoy is that Suresh has probably made a mistake about him as Satish does not mention seeing him there and both men would naturally have seen the same persons. This is answered by the fact that the two men would not always be together and the further consideration of capacity to observe and recognize comes in. Mr. Ghose also argues that giving a definite date does not make it true, though when a date is not given it is impossible to check the statement. This argument leaves the police in a very unhappy position, if they give a date it is not to be taken that that shows it is true, if they do not give a date the statement is probably false because it can't be checked. On the contrary it is to the credit of the police that they have not invented dates for all the various occasions on which they recognised people. And there is this fact in favour of both Suresh and Satish that they saw Bijoy at the garden where he admittedly was, so there was the less chance of mistake in identification when they saw him again. Both men say they saw him at No. 4, Satis says he saw him at No. 23 and Suresh says he saw him at No. 5, both on the specific occasion of the 23rd and at general identification.

identification generally has been on so liberal a scale that a little doubt does arise as to his having seen Bijoy at No. 15, especially as he never saw him between the last date of his watching and the 9th July, when he gave evidence before the Magistrate. And with the raising of doubt on this point there arises doubt whether Bijoy was aware of the objects of the society. And it is in his favour that he is only 17 years of age, and so less likely to have got beyond the course of training.

KUNJA LAL SAHA.

I next take the case of Kunja Lal Shaha. He was found in the garden. He said he had come from home on the 28th April intending to go to the Ramkrishna Mission at Benares. On the way he was told by a passenger in the train that there was an *Asram* in Maniktola. He found his way there on the 29th and got permission to stay three days to see how it was worked. He returned to his lodging that day and returned the next day to the garden. Two days later he was arrested. It is argued for him that he was going to renounce the world, that he had once before gone to the Ramkrishna Mission with that object, but been brought back by his family, and having recently lost a son and nephew, had determined again to go to Benares.

In his house were found books showing account of sales for the "Navasakti," some copies of that paper and a receipt for a money-order payable to the Manager of the Navasakti. He admits these and says that for about 3 weeks the "Navasakti" was sent to him for sale, he being the captain of the local samiti.

Assuming for the purposes of argument that the "Navasakti" was a seditious paper the sale of it for profit does not necessarily indicate that he was a conspirator. Nor does the fact that he was the Captain of wrestling at the local samiti.

On one of the books showing "Navasakti" sales is the name A. J. Oebabrata and then something nearly obliterated which is either Oas or Bose, probably the latter. A. J. Debabrata is an impossible combination. The prosecution suggestion is that A. J. means "account for Jaisbtha" That is possible and it is suggested

that the name Debabrata shows connection with the accused of that name. Kunja Lall says—"Debabrata" is not in his writing. But even if it is a note an unlikely explanation is to be found in Ex. 1277, the prospectus of the "Navasakti," which said that all money was to be sent to Debabrata Bose.

The prosecution has called evidence to show that accused came to Calcutta on the 17th April. He admits that he did, to attend a marriage. He, however, says he went back the next day and the crucial point in his case is whether he returned home or not. For the name Kunja is found on the back of Ex. XL-12, and if the identification of the shadowing witnesses is accepted that is a fact supporting the story that his connection with the gardeo was not what he says it was. Standing by itself the name on that map would go for nothing.

There is also an entry in Ex. LXXVI "Kunja Lall." This Mr. Norton suggests is this accused. It comes just after the name of Hrishikesh, but in a different line. In spite of the fact that the word is clearly written "Kunja", Mr. Norton argues that it must refer to Kunja Lall as Upen never writes the full name, or has not in any other instance. The only thing in support of his argument is that it is not meant for Hrishikesh is the fact that it is written by Kunja Lall and not Kanji Lall. But no Indian could possibly make the mistake of writing "Kunji" for "Kunja," except on the theory that after starting to write the name Kunja his thoughts had suddenly been deflected to Hrishikesh and he had finished the word as if he were writing Kanji Lall.

Mr. Roy argues that as the tank in which these maps were found buried was delivered on the 6th April, it was evidently wanted in a hurry, and therefore the contents of it were probably put in about that date. When the things were put in can only be a speculation. The tank may have been purchased in anticipation of a sudden emergency and the things put in it shortly before the raid. The object is to show the name on the map could not refer to Kunja Lall, because he only appeared on the scene on 17th April. But it has never been the prosecution case that he joined the conspiracy on that day. It was always suggested that he was

a member before though they cannot fix his presence in Calcutta before that.

He is said to have seen at Nos. 38-4, 23, 15, 4 and in the garden. His presence at 38-4 is spokeo to only by Shiba, Kali and his statement being uncorroborated may at once be dismissed.

The witnesses as to his being seen at the all-important place No 15 are Chandi Charan and Soresh. They have both made the mistake of identifying Sishir at a time when he was in Bombay, and Chandi speaks in a very positive maoner about him saying he saw him there three times. In regard to Kunja Lall, Chandi gives an instance of following which might reasonably be expected to give him good opportunity of identification. He says he followed him from No. 15 to the Simla Post Office. Now though it was of some importance to ascertain what other places were connected with the conspiracy Chandi did not follow him any further. The first reason he gives is that he has seen the man before, then that the man was alone, both futile reasons, and then that he was tried. I am rather sceptical about this incident of Chandi's. He says he reported to Biswas and thought he did not give a description of the man he said he would recognise him. Biswas made no mention of the incident at all, there is also point which makes Chandi's identification of Kunja Lall somewhat doubtful. He says he was never within 50 yards of him, and though he was evidently underestimated what 50 yards mean, it is impossible that he could have given that figure for a fairly close approach. Added in this is the fact that he gave his evidence in rather a reckless manner. I have a note which I made about the time that 'he frequently answered questions apparently without stopping to think and sometimes answered questions which he was not asked.'

Witness No. 121 says he saw him at Kushtia between the 17th April and the day that he read of the arrest. I think his evidence on the point is open to question.

He is also mentioned by witness No. 165 as seen in the garden. He says he does not remember whether he saw him before his 4th visit, and that he saw him on the 4th visit, but when first asked when he saw on that occasion he did point him out. His identifi-

cation is open to doubt, apparently he was not asked to identify any accused before he was examined on the 15th July before the Magistrate.

It is argued for Kunja Lall that he has made a straightforward statement. It is not difficult to invent a plausible statement after all the evidence has been taken. And it is rather suspicious that in cross-examination the suggestion was made that the entries in the note-book, which accused admits to be sales of the "Navasakti," were subscriptions collected for the poor.

HEMENDRA NATH GHOSE.

However, there is just the element of uncertainty which makes it unsafe to convict. Hemendra Nath Ghose was arrested in the garden. Five books with the name were found there and Ex. 261 is an application by him to withdraw money from the savings bank. The name Hemendra appears three times in Ex. 311, Aurobindo's account book. He is said to have been seen at No. 23 by Satish, and at the garden by Suresh and witnesses No. 163 and 165. That is all the direct evidence against him.

His case is that he came from Bombay with Sishir. He had been there for a change and to learn the weaving industry. On their return finding the hostels and messes of Calcutta closed for the summer holidays Sishir said that he heard that Barin lived at No. 37, Muraripukur Road and suggested that they should go and put up there, and they did so.

If his story be true the presence of his books there is explained. Mr. Norton argues that Ex. 261 which is dated 18th October between a long stay there. But it appears never to have been acted on. It is an application to withdraw money at Moradabad, near Patna, so the fact of its preservation does not imply that it had always been in the garden. On the other hand this exhibit in conjunction with Ex. 191 supports his story that he was reading for the Muktearship Examination at Patna. The fact of the name Hemendra being in Ex. 211 goes for nothing. There is nothing to show it was he. Ex. 305.2 shows one Hemendra Nandi in communication with

Abinash and in Ex. 311 itself there is mention of one Hemendra Mazumdar.

It is the case both of the prosecution and defence that it was this accused who accompanied Sishir to Bombay. On this fact Mr. Norton argues that all the evidence against Sishir is evidence against him. That is true, so far as it goes provided it be shown that there are reasonable grounds for thinking Hemendra to be a conspirator. Reasonable grounds are found in his presence in the garden. But there is nothing in the letters from Sishir to compromise Hemendra in any way. Hemendra suggests an innocent explanation for his living in the garden.

Satish did not mention him in his deposition before the Magistrate. Suresh must be wrong in seeing him in the garden when he was in Bombay. Witnesses Nos. 163 and 165 no doubt speak of seeing him in the garden at an earlier period. This only suggests that his appearance there on the 30th April was not his first appearance. But he is not being prosecuted for telling lies, but for being a member of a conspiracy. He is not mentioned in any of the compromising books either by name or initials. And Barin in his confession only speaks of him in general terms with the other persons staying there as being instructed in religious and political books.

No doubt his being in the company of Sishir who appears to be a missionary for the society is against him, but there is nothing to show that he identified himself with the objects of the conspiracy or that he knew what they were. One of his books is the Desher Kotha which contains some inflammatory passages, but this is just the sort of book which Barin and Upen use for their political instruction without giving any necessary insight into their real motives. In his case then there is doubt.

NIRAPADA RAY.

Nirapada Ray was arrested at 15, Gopi Mohon Dutt's Lane. He and Kanai Lall Dutt were then the only persons in the house. Against this accused specific incidents are alleged. On the 28 :

April Suresh and Satish saw him leave the garden with Upen and Krishna Jiban. After Krishna Jiban had parted from the other two they saw these two with two Madrasis and talk to them for a little while and discovered that place for the first time, while Satis followed Upen and Nirapada to No. 4, Harrison Road. On the 21st April Suresh and Satis saw Nirapada go with another person from the garden to the shop of D. Waldie and Co. Nirapada entered the shop and came out with a big jar of colourless liquid like Ex. 435. The clerk of the shop proves the sale of 10 lbs. of concentrated Sulphuric acid on that day in a jar like Ex. 535. This Ex. was found in the garden. There the two men brought two large enamelled iron pots at a shop in old China Bazar Street. The shopkeeper proves the sale of two such pots on the 21st. Finally the two men returned to the garden. Similar pots were found in the garden, Ex. 392 containing earth, oil and resin; and this supports the theory that the manufacture of moulds went on there after the 21st. On the same day the boxes, etc., were removed on the cart from No. 38-4 to No. 15. Sarat Palit says he thinks that Nirapada was one of the men who came out of No. 15 to unload the cart. Mr. Norton in arguing the case said that before the Magistrate Palit pointed out Paresb as the man. This is not correct. Palit pointed out Paresb as one of the men who went with the cart to No. 15. With regard to the unloading at No. 15 he said he might be able to identify the man. He pointed out Nirapada. It is not very likely that Nirapada would have taken part in this as well as the trip to Waldie's and China Bazar and back to the garden. Palit is possibly making a mistake about the identity of the man who unloaded the cart, for Suresh and Satis had ample opportunity for identification while following Nirapada, especially as they had already followed him once. On the other hand it must be remembered that Nirapada appears to have taken up his quarters at No. 15, as he was arrested there and is also said to have led Paresb in on the 28th, when he came and called out "Nirmal," so it may be that Nirapada took part in both transactions. Nirmal is one of the aces by which Nirapada went, of this there is ample proof.

Another alias is Amar Nath Baoerji, this being the same under which he took No. 15, for it proved that he is the man who paid the money and got the receipt Ex. 385-1 which was found at No. 15 and is a receipt for the rent for the month of Baishakh, paid in advance.

I have already pointed out that he was associated with Satyendra Nath Bose at the Chattra Bhandar at Midnapur, of which Satyendra was manager. For this there is the evidence of witnesses No. 50, 82 and 90. Then there is, Ex. 1130, a letter from Satyendra found in the garden. It is an envelope and addressed to Nirmal Chauder Ganguli, 30-2, Harrison Road, Calcutta. It quotes a letter in full from Ramesh Chander Chaudhuri who is the prosecution witness No. 33 and asked Nirmal to see Ramesh and settle up some confusion in accounts of pictures sent by Ramesh for sale. Ramesh, who was living at 25, Sitaram Ghose's Street, the address given in the quoted letter, admits having written such a letter to Satyendra. Ex. 1035 is a list of names with figures opposite to them and on the back of the paper is written Satyendra Nath Bose, Colonel-gaoj, Midnapur, 1908, 28th April. This is the date of the letter to Nirmal and the names, figures and prices correspond exactly with the list in the letter to Nirmal. Ex. 1034 was found in Satyendra Nath Bose's house. This makes it absolutely certain that the Satyendra who wrote to Nirmal is Satyendra Nath Bose, and from the fact that he was associated at the Midnapur Chattra Bhandar with the accused Nirmal, that the addressee of Ex. 1130 is the accused Nirmal. Incidentally we get two more facts from this, viz., that Nirapada also went under the name of Nirmal Chander Ganguli and that there is another link between the garden and No. 30-2, Harrison Road.

In this connection I may refer to Ex. 1862. It is a letter from one Gobin to "brother doctor". Mr. Norton suggests that "Brother Doctor" is Upen because he at one time studied medicine. But considering the fact that 30-2 was a druggist's shop that letters were found there to Bisweswar Ganguly, Ex. 761-66, refer to medicines; a reference which may be blameless or only in veiled language, that Nirapada appears to go by the name

Nirmal Ganguli at No. 30-2 and that Ex. 385-2 was found in No. 15 where Nirapada was living. I think it is quite possible that the "Brother Doctor" is either Nirmal or Bisseswar, or perhaps it may be Monmath Nath Banerji, the ostensible occupant of the shop. Whether Monmath Nath Banerji is also an alias we don't know, but is somewhat curious that one of Nirapada's aliases is Amar Nath Banerji. Ex. 285-2 is of no particular importance as against Nirapada, the prosecution seeks to connect Aurobindo with the conspiracy through it.

Exhibit 353 is a paper with two letters from Hem Chander Dass. In the second there is a reference to Nirmal.

The only point of this is to connect Nirapada with Hem Chandra Dass.

In the garden Exhibits in Ex. LXXVI we find the name Nirmal on two lists, in the first page and again in the last under "first batch to consist of." In Ex. 239 we find both in the list and in the distribution of circles the initials N. G. The prosecution suggests this is Nirmal Ganguli by reading this book in connection with Ex. LXXVI. Mr. Bonerji suggests the initials may stand for Naren Gossain, Naren's name does not appear in Ex. LXXVI. But it can only be a matter of speculation as to whom it is referred to.

In Ex. 667 we also find the initials N. G. in the first list which corresponds almost exactly with that in the Ex. 239. This book as before stated was found at No. 134 and presumably came from No. 15.

As regards things found at No. 15 other than the material objects to which reference has already been made the most compromising is Ex. 384. This is a sort of paper; on the first page are formulæ for phloginate of mercury, picric acid and nitroglycerine, with instructions for making. On the second is a song in Bengali, the translation of which runs "Men, great warriors, take up arms. The English are oppressing you every day doubling it. All the money of ours are taken away and they are becoming creditors. Independence can't be had easily; without blood who has got it? Every one has to go through difficulties

first. Have I a chance?" The combination of a formulæ and song suggestive, one sets out the object, the other the means. And in No. 15 as elsewhere we find the writings of Mazzini and Garibaldi and a slip of paper on which are the words "The aim of the present work is to place in the hands of a revolutionary," the opening words of the cyclostyle work on explosives. One more connection between No. 15 and the garden is also copies of the Mukti Kon Pathe and Bartaman Ranonity.

It is suggested that the findings are the property of Kanai Lal Dutta and not of Nirapada as the latter was found sleeping in the passage, Kanai being inside. But Nirapada's connection with the house is abundantly proved by the incidents to which I have referred and by his constantly being there, both during the time it was used by the conspirators and after the explosives had been removed to No. 134.

One of the assessors thinks there is doubt in his case, the other thinks he was employed to do the less important work of the society and was therefore not taken into confidence. I cannot agree in this view. He is the man who paid the rent for the house where bomb-making was carried on, he was constantly living in the house; he was seen in company with Upen, he is identified as one of the persons who received the boxes from No. 85-4, he is connected with Satyendra Naib Bose, he was found living in the same house with Kanai and his name is in the working lists in Upen's book. It is impossible for the prosecution to prove his connection with the conspiracy further, and to my mind these facts are capable of no other explanation than that he was a member of the conspiracy.

DHARANI NATH GUPTA.

The cases of Dharani Nath Gupta and Nagendra Nath Gupta may be taken together. They were the occupants of No. 134, Harrison Road and were arrested there. They were tried and convicted at the High Court Sessions under the Arms Act, Sec. 19, *f. e.*, having arms or ammunition with intent to conceal it.

Their possessions of ammunition with intent to conceal it must therefore be taken as an established fact against them. They are said to have taken in the boxes containing explosives when brought by Ullaskar. There is no further evidence against Dharani.

NAGEN.

Against Nagen there is the evidence of Chandi Charan that he was seen at No. 15, of witness 165 that he was seen at the garden and the finding of a book, Ex. 1426, is stamped with his name and address there. The fact that these two men took in the boxes brought by Ullaskar knowing what were their contents is not sufficient to bring home to them any of the offences with which they are charged. It does not prove knowledge of the conspiracy. It may be that they were only obliging Ullaskar. Dharani then is not proved to be connected with the conspiracy.

As against Nagen there is the more important fact that he was in possession of the key of the cane basket in which was the hand bag containing the live bomb, but this again shows no more than that he knew the contents, with the possible presumption that he would naturally make enquiries about such a novel thing was the partly made bomb, even assuming that he did not see the live bombs.

His being at No. 15 depends on Chandi's evidence. Now Chandi says that he told Biswas when he saw Nagen at No. 134, that he had also seen him at No. 15. Biswas says nothing about this. Chandi says he may have told Biswas in the street, so it is quite possible that Biswas did not make a note of it and forgot it. But Chandi did not mention the fact that he watched No. 134 either in the Magistrate's court or here in examination-in-chief. It is possible that the fact slipped his memory when asked here what places he watched. From the Magistrate's record it is impossible to say in what form the questions were put and if Mr. Norton examined him there I can quite imagine that attempt to say anything not in direct answer to a question would be promptly stopped. In fact it struck me more than once during the case

that Mr. Norton required too rigid an adherence to the exact statement made by a witness in the Magistrate's court and would not brook any amplification or explanation of such statement. And as he does not appear to be acquainted with the modes of thought and expression of people of this Presidency the result was that he frequently tried to make a witness say what he never intended to say. However the fact remains that no mention of 134 was made by Chandi before the Magistrate, so there is some reason to doubt his having reported to Biswas what he says he did, and this affects the question whether in fact he did see Nagen at No. 15.

The evidence of witness No. 165 is to some extent supported by the finding of the book 1426 at the gardeo. For accused stated that the book is not his, and if it was it may have been taken by Ullaskar. This alternative kind of defence is not convincing and it would have been better at once to admit the ownership and say Ullaskar took it. However as he was not seen by any of the watch witnesses at the garden and as his name does not appear in any of the books of the gardeo I am not prepared to say that his connection with the garden is established, merely on the evidence of the constable and the finding of one book with his name in it.

ASOKE CHANDRA NANDI.

I next take the case of Asoke Chandra Nandi as he is connected with the same incident. He was arrested at No. 134. His case is that he had been staying about 10 days at Sibpur at the house of his uncle, who is Ullaskar's father and as he had dysentery he went to Nagendra Nath Gupta, who is also his cousin, for treatment. He was arrested after being there two days.

The evidence against him is that he was seen in the garden. That on the 26th April when the boxes were removed from No. 15 to No. 134 he was the man who sat on the box by the driver, that a postcard addressed to him and a hook of his were found at No. 134.

He was one of the persons tried at the High Court Sessions,

but was acquitted. That acquittal does not give much assistance in this case, it merely amounts to this that he was found not guilty of being in possession of ammunition with intent to conceal. It may have been to various considerations the Jury may not have believed the identification that he was on the hackney carriage, which drove from No. 15 to No. 134, they may have thought that perhaps he did not know that he was in the boxes or that he was not in possession of the explosives. In that case no evidence to show his connection with the garden was admitted.

As regards the finding of the postcard there is some difference. Biswas says it was on the *taktaposh*. Hamilton says it was found in the 2nd box. He says it could not have been found on the *taktaposh* because that had already been cleared when the contents of the second box were put on the *taktaposh*. That is what one would expect to happen, and we have the fact that it was entered in the list made at the time, as found in the box. Biswas may have seen it for the first time on the *taktaposh* and so concluded it was there. However, as there is a difference on the point I would not lay stress on the fact of the postcard being in the box. If it was it must have been put there not before the 31st for the postmark shows that it reached Sibpur on that date. Ex. 669, a book with his name in it, was found in the cane basket. Of course the finding of both the card and the book is consistent with his story that he came there two days before the arrest. The point which the prosecution wishes to make out of them is that they were found in conjunction with explosives.

The fact that he was on the box of the hackney carriage, when it drove from No. 15 to No. 134 depends on the evidence of the driver, Alijan, witness No. 191. It is suggested that his story is false because he was not called to identify the man till some time after, and he admits he cannot identify other people whom he has driven, or remember the trips which he has made. Now he says that if he see people whom he has driven he will be able to identify them. A witness of his class will nearly always say that he cannot identify a man if he is not there to be identified. He says "I shall not be able to identify whom I drove in my carriage the day before

or the day after. If you show me the men I drove I shall be able to identify them." And the type of man one has to deal with is exemplified by the statement that he does not remember where he went two days before his examination.

Again there are differences between his statement in this court and that before the Magistrate. For instance he told the Magistrate he saw other Babus in the house at No. 15, but here he said he did not. That is a point on which he might reasonably be forgetful as he said in the Magistrate's court that they gave no assistance in putting the boxes on the carriage. Similarly there is a difference as to who paid his fare. Here he said Ullaskar paid it, there he said he did not know by sight the Babu who paid it. This is a point on which there might be lapse of memory.

The important point is that he identified Asoke before a Deputy Magistrate in the jail. It is suggested that he identified Ullaskar and Asoke because they were one at each end of a line. He says "they were at each end of the line," but immediately after he says "I do not remember where the two men were standing, but they were standing at the end." This latter phrase does not mean they were the last two men in the line, it means at the end in contradistinction to the middle. The Deputy Magistrate distinctly says they were not at the end of the line. Against the Deputy Magistrate it is suggested that he made a false identification report in the hope of getting promotion. This is quite in accord with the suggestions of conspiracy to defeat justice and fraud, which Mr. Dass has made against practically every single individual who has had anything to do with this case and rests on no better grounds than most of his insinuations. It is clear that the arrangement of the prisoners was made not by the police but by the jailer out of sight of the men who was to identify. Then the suggestion is that Alijan had previously been shown the accused. They apparently did not know it, for neither of them said anything to the Magistrate about the identification not being fair.

Finally it is suggested that Alijan had seen them at Lall Bazar. When he speaks of seeing them here he obviously refers to the enquiry before the Chief Presidency Magistrate and that was

found in conjunction with explosives. There is also the fact that he had been staying with Ullaskar's father in his own statement. It may be perfectly true that he had gone to No. 134 for treatment two days before his arrest, the postcard shows that he had been in bad health, but this is in no way inconsistent with the prosecution story.

To my mind the above facts are sufficient to connect him with the conspiracy.

BIRENDRA NATH GHOSE.

I next take the case of Birendra Nath Ghose. He was arrested at his house in village Sagardari on the 14th May and made a statement to the Magistrate on the 15th. This statement he subsequently retracted before the Magistrate saying that it was false and that the police induced him to make it. His Counsel, however, relies on it as a true statement and says he was made to withdraw it in the Magistrate's court to serve the interests of some other accused persons. That is possibly correct, and I fear it is not the only instance in which the interests of one accused have been subordinated to those of another.

He says that he came to Calcutta at the time of the Ardhodaya Joga, *i. e.*, the beginning of February, 1908, and one of the places where he stayed was 46, Harrison Road, with his brother Dharendra. He went home and came again to Calcutta a few days after to study at the National College. While staying at No. 46 he met Indu Bhushan Ray, whom he had previously met in Khulna. Indu Bhushan told him of an *Asram* in a garden at Maniktola, where Upendra Nath Banerji taught Gita and Indian Philosophy. Being of a religious turn of mind he went to the garden. This was at the beginning of March. Upen asked him to read certain books and after an interval of about a week he went again to the garden and stayed day and night for 5 or 6 days. He was told there was a regular class for the Gita and other philosophical books, Upen being the teacher. He names others who were there and says that he read the Gita regularly.

He left about the middle of March and returned to No. 46. Then he went home. He came back to 46 and then went to Deoghar with Dharendra, about the 7th April. He stayed till the 9th or 10th May and then was arrested on his return home.

He says he went daily to the garden for about a week and for a week stayed there day and night. He was given some hints that after a year's complete religious training he was to serve his country, in any way in which Upen might describe. He told him that after a year's training they would be employed in work, he did not say what work, "but I was given to understand that I was to sacrifice my life and other secular concerns and do nothing except serve the country."

This is not in any way a confession, on the contrary, it is a self-exculpatory statement.

Among the things found in the garden was a cast Ex. LXX, containing among other things 3 postcards, Exs. LXXI-1-3. There is nothing compromising in these postcards. They are put in to show the dates. All are addressed to the accused at 46, Harrison Road and reached Calcutta between the 1st and 4th April. That Biren was in the garden on these dates is not quite consistent with the evidence of his brother Satyendra, but it is consistent with his statement to the Magistrate. The defence suggestion is that the first, which enquires about Fazu, another name for the accused Hemendra Nath Ghose, was given to Sishir when he went to No. 46 to see Dhiren, Biren's brother. In regard to the other two it is said on behalf of the accused that either Hemendra or Sishir borrowed the book, Ex. CLXXV, also found in the garden from Birendra, and that the postcards may have been in it.

In Ex. 201, there is an entry "Biren for tram hire" on 14th March. This is about the time, he said, he was in the garden.

In Ex. 1249, the second account book, there are entries against the name "Biren" for 5th and 6th April. If these refer to him they support the idea that he was in the garden in the first week of April, and that he took the postcards there.

On the back of the map, XL-12, is the name Biren.

Ex. 195 is a series of moral precepts found in the garden. The defence accepts this as his.

Ex. 376 is a copy of the Jnan Yoga with his name written in it. Witness No. 148, his brother, says the name is not in Biren's writing. It seems to have been written by the same hand as Exs. Nos. 885, 886 and 887 which the witness says are in Biren's writing, but this is not absolutely certain. The defence suggestion is it may have been taken there.

There are certain letters on which the prosecution relies as connecting him with the conspiracy. One is Ex. CXV, the letter written by Upen to Sishir in Bombay in answer to one from Sishir. It mentions Biren as having gone away and left no address, but suggests he has gone to Baidyanath. Ex. CLI is the letter from Indu to Sishir. It mentions bearing about Sishir from a letter of Biren and says that Biren seems to have disappeared. If this refers to accused Biren he must have left Calcutta before the 23rd April. Ex. 896 is a letter from B. to Upen with a letter from B. to Sishir on the same paper. This is the letter that was intercepted. The defence deny that it was written by Birendra. The general style of the English address at the top is like his, the Vernacular portion appears almost certainly to be by the same hand as Ex. 884. His brother says neither of these is in his writing, but it is singular that a letter should come from "Boral's Koti" at Deoghar signed B. on a date when it is said that Birendra was staying at that very house, and that it should refer to Sishir's return, while Ex. CLI shows that Biren, and Sishir corresponded, as is likely they being cousins. This letter evidently belongs to the envelope Ex. 925. In this envelope the B of Banerji is very like the B of Birendra in Exhibit 885, which is in the accused's writing, and the general character of the writing on the envelope is the same as that in Ex. 885, 886 and 887. On the envelope are the words in Kaithi. "E sab lok polis pakrke le gea," which supports the statement of the postal peon that he went to deliver the letter at the garden and a constable wanted to take it, but he refused to give it. The importance of the letter lies in the passage in the middle: "It appears to me that the work

hints that he would have to serve his country, but how was not disclosed. "That he was to sacrifice his life" must not I think be taken too literally. Taking the whole sentence, the conjunction of life" and "other secular concern" he probably meant nothing more than renounce the world.

It is attempted to prove his connection with No. 15 by the postal peon, witness No 114. I don't place any reliance on him. He does not say he saw Birendra ; there his evidence is that he delivered letters there to Birendra Nath Ghose. But as he reads the words Birendra and Barindra as the same thing his evidence does not go for much. And while No. 15 was under close observation he was never seen there though Satish and Suresh saw him at the garden and as I said before his face is one that would be easily recognizable.

I am not satisfied that he was a member of the conspiracy or had any knowledge of the objects of it.

BIJOY CHANDRA BHATTACHARJI.

Against Bijoy Chandra Bhattacharji the case is weak, and counsel for the Crown admitted that it was doubtful if he was in the conspiracy. He was not seen at any of the places of association. The evidence against him consists chiefly of Ex. 1210 found in his house and Ex 1132 and 1133 found in Hem Chandra Das's house.

Ex. 1210 is a note book containing a number of names and addresses and some formulas for explosive and detonating mixture. On the outside of this book are words the "C. K. Chakrabarti's Important notes of corresponding friends." Chandra Kanta Chakrabarti is a cousin of Bijoy's and Bijoy says that he often used to stay there. This is very probably as true as other papers of Chandra Kanta's were found there, viz, Ex. 1233 and Ex. 1212. The latter is a letter of 11th April 1908 from Hoti Lall Varma asking some Chakrabarti, probably Chandra Kanto, to see him at once on urgent business, from the "Amrita Bazar Patrika" Office.

In connection with Ex. 1210 the main point against Bijoy is the evidence of contradictory statements as to his possession of

it. Inspector Lyons says he found the book on the first day of his search, which went on for two days that he saw the formulæ for explosives and asking Bijoy for an explanation was told that the book was Hoti Lall Varma's. The name given was Barma—, but he understood it to mean Varma, because Bijoy added that he was being prosecuted at Aligarh. Panna Lall Brahmachari who also assisted in the search denies that the formulæ were seen that day, if it had been he would have arrested Bijoy. Lyon says that he did not arrest Bijoy but told him he would come next day and finish the search, leaving all the other papers in the house in his charge. The defence admits that the book was found the first day but suggests the formulæ were not seen till Inspector Alam examined the book. That is probably correct, otherwise it is impossible to understand Lyon's attitude in leaving Bijoy in charge after finding such a compromising document. Lyon is probably somewhat bary about the facts though he won't own it. What probably happened was that the next day he asked Bijoy about the book and the letter and got the whole conversation mixed up in his mind. A copy of the "Mukti Kon Pathe" was also found there with a stamp B. C. B. on it. Bijoy admits the stamp to be his, but says the children of the house used to put the stamp on anything they could put their hands on. This is a very reasonable story and may be true.

Ex. 1211 is an inflammatory appeal to the people and Ex. 1226 is an article from the *Pioneer* referring to it and giving a translation of which Ex. 1211 is an incomplete copy. There is nothing to connect these with Bijoy. Ex. 1133 found in Hem Dass' house is a letter:—"My dear Bijoy, do justice to the thing entrusted to you" and signed C. K., probably Chandra Kanto. Ex. 1132 is an envelope addressed to Bijoy at 30, Kanisankari's Lane. The letter was not found in the envelope which was intact. The natural inference is that the letter was to have been put in that envelope but was never sent. There is nothing to show what the thing to be entrusted to Bijoy was. It may have been the note book with formulæ. In that case we must suppose that the book was sent independent of the letter. The defence

suggests that it may have referred to a book of poems by Chandra Kanta, called "Rosebuds," of which the agent for sale was Bijoy's brother, or that it may have referred to some manuscript of Chandra Kanta's. At any rate, the case against Bejoy cannot go beyond suspicion.

BALKRISHNA HARIKANE.

I next take the case of Balkrishna Harikane. He was arrested in Nagpur on the 20th July ; the evidence against him is almost entirely oral. The incidents spoken to are as follows :—

On the 20th April, Suresh and Satish following Upen and Nirapada from the garden, saw them meet two men, whom the witnesses took to be Madrasis. Both identify one of the two as Kane, Satish followed Upen and Nirapada to 4 Harrison Road, while Suresh followed the other two to No. 15 and so discovered that house.

On the 22nd April, Suresh saw two men come out of the garden, one was a Bengali, the other the second Madrasi whom he had seen on the 20th.

On the 23rd April Suresh saw Kane come out of No. 15 and followed him to the Standard Medical Hall, where he bought something and returned to No. 15 on the same day. Satish saw both the Madrasis, whom he had seen on the 20th come to No. 15.

On the 24th April Satish saw another Madrasi, making the third, come out of No. 15 and buy some tin, resin, etc., and returned to No. 15.

On the 27th April Bolai was watching No. 15 ; he saw a man with spectacles, whom he identifies to be Kane, drive with Hem Chandra Dass to the B. N. R. Office in Harrison Road. Bolai found Suresh in Harrison Road and he had been watching No. 15 and call his attention to the fact. The carriage in which the two men had come to the B. N. R. Office then drove off to Howrah and the two witnesses followed in another. Suresh saw Kane at Howrah but not Hem Dass. While Bolai was taking tickets for Midoapore and as Kane was with Hem Dass, they

thought Midnapur to be their destination. Suresh sent information to Mr. Plowden. The two officers then went by the same train as Kane whence they returned having found out that Kane was going on to Nagpur.

Subsequently the name of Kane was got from Barin and on the 18th May, Bolai was sent to the Morris College to enquire, with instructions that if he did not find this man there he might find him at Dhulia. He got some information at the Morris College and went to Yotmal, which is Kane's house. He was not there and the Nagpur police were asked in May to look for him. He surrendered himself on the 20th July and when told he was wanted for the Bomb case said there must have been a mistake and that he had been away on a pleasure trip.

The dates then on which Kane was seen are the 20th, 23rd and 27th. With regard to Satish's statement of the 23rd, it appears that he made no mention of the fact when examined before the Magistrate against the first batch, though he did when examined against the second batch. On the first occasion Kane was not present. That might be taken as a reason for the commission except that Satis says he saw 3 or 4 persons entering No. 15, of whom one was Indu Dbusan and he thinks he could identify one of the others. The natural thing would have been to say that another was one of the Madrasis seen on the 20th. In the circumstances it would not be safe to rely on Satish's account of seeing Kane on the 23rd.

With regard to the incident of the 20th, it is suggested that it never took place. In the first place it is argued that the shortest way from No. 15 to Howrah would not be via Harrison Road and that the object of choosing that route would be to bring Suresh in. It may be that Hem Chander Dass had some business in that direction for he seems to have disappeared before the party reached Howrah. To invent such a story in order to bring Suresh in, could only be done with some object. It could not be against Hem Dass for Suresh says he never saw him on that occasion. Then it must be against the other man. But it is to be noticed that no one answering the description had been found when both

Bolai and Suresh first gave their evidence and no one could have known that anyone would be found, so the only thing the two men would gain would be to show that they had not exercised sufficient acumen in returning from Sini and had got an official reprimand for it. All sorts of suggestions are made about the return ticket and the travelling allowance bill and the messages to Mr. Plowden not being produced. It is the old story. If they had been produced they would have been characterised as forgeries ; they only become valuable because not produced. There cannot be the slightest doubt as to the two men having gone on this trip.

It is also argued one, says he, found out at Kharagpur and the other found out at Sini that Kane was going on to Nagpur. If the statements of the two men in cross-examination are read together they give a perfectly reasonable explanation. That this difference should negative the idea of a concerted story.

Again it is suggested that if the story be true the two men have made a mistake of identification. It is clear that both men had ample opportunity to observe the men whom they were following sufficiently to be able to identify him. The journey to Sini is one of several hours. Suresh had seen him on two previous occasions, and there is no reason to suppose he was not able to amply identify him on those two occasions. He wears spectacles and as his upper lip is rather drawn back in a half smile his face is one easily recognisable. Much has been made of the fact that Bolai in his first examination before the Magistrate spoke of his face as spotty and at the second spoke of him as marked with small-pox. And as Kane has not had small-pox it is argued that he is the wrong man. To my mind a great deal too much is made of those statements.

Here also Bolai says he sees the remainder of the spots and points out a small pimple. It is quite possible he would seize on any pimple as the remainder of what he said he saw before. But why ever should Bolai say he had small-pox ? When he gave evidence on the second occasion on the 1st September he had already seen and identified Kane in the jail on the 24th July and Kane

was in court before him at the time. Anyone knows that small marks will not disappear like this, and I cannot conceive why Bolai should say that he had small-pox marks when he had the man standing before his eyes. It is quite possible that Bolai said or meant marks like small-pox marks. Kane himself said that he had itch in jail and might have had some scratches on his face and the suggestion is that because Bolai saw these marks he told the Magistrate the story about small-pox as a possible means of identification, but this leaves out of sight the fact that Bolai, in his earlier deposition, before Kane's arrest had spoken of him as spotty face. "Spotty" was a more safer term to use than pox-marked, and it is inconceivable that Bolai should have deliberately inserted a description; the disproof of which started him in the face. He would not have put down the scratching on account of itch and marks of small-pox. The result is that before he again sees the man after the trip to Sini he gave a description which probably was a correct one. After he has seen him and when he is identifying him and has him in front of him he gives a description which cannot apply to him. Evidently it is a case of misdescription, which is a very difficult thing from incapacity to identify.

One of the assessors, who gives his reasons for not and thinking Kane guilty says he is not a Madrasí and does not look like one. The police officers have given their reasons for thinking he was a Madrasí. Recognising that he was not a Bengali they may well have jumped to the conclusion that he was a Madrasí, and if this discerned his nationality among themselves the mistake made by one could easily extend to the other.

There is one document that touches the question of Kanai, viz Ex. 373-44. This is a slip of paper bearing the word, B H. Kane, C/o Woman Gopal Joshi, Budhaswar Seth, Amraoti City. It was found, in this court, in a volume of the International Library of famous literature. In Ex. 382 found at No. 15 one of the names and addresses given is V B, C/o M.V. Joshi, Esq, Amraoti. The only similarity between the two is the name Joshi, and Amraoti. The first suggestion of course was forgery and that the paper was intro-

duced into the book while the record were in the Magistrate's Court. Mr. Feeny who superintended the search of No. 15 is certain that he saw the slip of paper at the time he thinks Madden drew his attention to it. Madden does not remember it. Mr. Feeny says he did not initial the paper as it was in a book and he initialled that. The learned pleader who appears for Kane does not follow Mr. Dass and invents forgery and perjury indiscriminately. He does not suggest that Mr. Feeny would lie, but he argues that he had a vague recollection of seeing a slip of paper in the book, and trusting his subordinates he jumped to the conclusion that this must be the paper and so stated as a fact what is a real inference. Mr. Feeny says he only remembers the name "B. H Kane" and not the rest of writing on the slip. I have no doubt that if Mr. Feeny did not remember the name and he would not have said that he did.

Then it is argued that "B. H. Kane" on the slip may refer to some other person as it is not shown that the address on the slip was Kane's address. That is possible, but it does not necessarily follow that the address given on the slip is a place where B. H. Kane ever lived. The address may merely be given as one from which letters would always be forwarded wherever the addressee would happen to be. And the very fact that one Joshi mentioned in the slip has different initials from the Joshi mentioned in Ex. 382 negatives the idea of forgery of the slip. There would be no object in forging an address which could not be connected with any other paper found.

The accused when questioned denied knowing No. 15. His pleader says that he was never in Calcutta. But the accused himself does not say so. On the contrary the natural inference to be drawn from his statements in both Courts is that he has been in Calcutta. To the Magistrate he said, "I never went to the house in Gopi Mohan Dutt's Lane and I do not know in what part of Calcutta it is". To me he said, "I don't know what part of Calcutta that is I had never been there". In both cases if he had never been in Calcutta at all one would have expected him to say so instead of saying that he did not know that part of Calcutta.

The facts against him are then that he was seen on three different occasions going to or coming from No. 15, that of No. 15 in a slip of paper was found with the name B. H. Kane on it, that Barin gave the name Kane, and that led to his being arrested. He was also seen in connection with Upen, Nirapada and Hem Chandra Dass. Finally, he disappeared from Calcutta immediately after the removal of the explosives from No. 15 to No. 134. The removal of them suggests that the inmates of No. 15 had become suspicious, and it was probably the continual haunting of the place and its neighbourhood by the shadowing witoesses, that made them suspicious.

It is in his favour that he eventually gave himself up, but it may be that he was making a virtue of necessity as a warrant had been out against him for two months.

I have not referred to similarity of handwriting. A vokalatnama on an application for bail was put in for comparison of the signature with the writing on the slip of paper. I admitted it with some hesitation and on reconsideration I think I was wrong. I admitted it because there were similar writings in two different places. That was really putting the cart before the horse for it was comparing two unknown things. Had the signature on the vokalatnama been proved, the writing on the slip could have been compared with it, but it was wrong to admit the vokalatnama because it resembled the writing on the slip, when the object of putting in the former was to prove the latter.

We have, however, signatures of Kane on his statements to the Magistrate and here, and so far as it is possible to compare writings with so little material, I must say there is a strong resemblance between these signatures and the writing on the slip.

Kane's connection with No. 15 and some of the leading characters in the conspiracy is clearly proved. The facts raise a sufficiently strong presumption against him to render it necessary for him to explain the facts, which he has not done. I accordingly find that he also was a member of the conspiracy.

THE SYLHET BROTHERS HEM CHANDRA SEN.

I next take the cases of the three Sylhet brothers—Hem Chandra Sen, Birendra Chandra Sen and Sushil Kumar Sen. They are the sons of the Sub-Registrar and were arrested on 15th May at Senpara, Baniachang, on which occasion the house was searched. The police went with a warrant for the arrest of Sushil and in consequence of what was found they arrested also Hem and Birendra. My task in regard to those brothers has been rendered more difficult as Counsel for Crown has dealt with the three as one and has separately pointed out the evidence as it affects them individually leaving me to do that for myself an especially difficult task considering the mass of letters found in their house.

All three are said to have been seen at the garden and Sushil and Biren also at Nos. 23 and 4. The persons who identify them are Suresh and Satish and in the case of Sushil at the garden. Chandi also. The three brothers all say they left Calcutta together at the end of March returning to Sylhet. With regard to the three shadowing witnesses I have already referred to the mistake they have made and the consequent care that is necessary in accepting these identifications when not connected with specific acts. Here again we have what is almost certainly another mistake on the part of Suresh and Satish in identifying Biren at the garden. Biren writing to Abinash on the 23rd April (vide Ex. 303-3) says he has gone home two weeks. There is apparently no reason why he should make a false statement in that letter; there is no reason for supposing he wished to conceal his movements from Abinash. And this letter receives corroboration from Ex. 520-30 in which the writer says he is sorry not to have met Biren at the time when he went home. This letter was written on the 9th April.

We do, however, find the names of Biren and Sushil in connection with the garden. Among the names on the back of the map, Ex. 12, is the name Sushil and a name which is somewhat indistinct, but which I read as Biren. I see that Mr. Birley also read this name as Biren when he had the exhibits before him. He mentions

it in his commitment order when dealing with Birendra Nath Ghose. In this map the names Biren and Sushil come one after the other.

In Ex LXXVI in the very first list we have the names Biren and Sushil again together. Again in the list of the first batch we have the name Sushil in the list, in Ex. 239 are the initials S. and B. S. and in the distribution into circles S is entered under the head of extra. In Exhibit 667 initials S. S. appear in both lists.

In Ex. 231-2, a book which contains formulæ and several unintelligible reference is the name B. C. Sen, 128-3-1, Kerani Bagan Lane. His Counsel suggests this cannot refer to Biren as his address was 128-3, Keranibagan Lane. It probably represents a further sub-division of what was originally premises No. 128-3, and in fact in the letters to him we find both addresses given.

In Exhibit 206, another note book found in the garden in which are instructions for making various explosives, are two addresses thus (1) 128-3-1, Keranibagan Lane, (2) 28-1, Harison Road. Sushil followed immediately by the entry "Karmajog issued to Sushil." Here we saw we have the name Sushil and an address coming immediately after an address at which Birendra, if not, also Sushil was living.

In Ex. 24 we get the name Sushil against the dates 27th and 28th April.

In Ex. 201 under the head list of books lent to others for temporary use in the entry, Sushil Bajirao, 19-2-08, a date when we know Sushil was in Calcutta.

The most important thing found at the search of their house was a packet of powder and two note books Exs. 479 and 491.

The homestead consists of three houses, one on the north, one on the west, one on the south. The north house was unoccupied, in the west were Hem and his father and in the south house the two youngest brothers. Whether this was a permanent arrangement or not we did not know, the greater part of the property came out of the south house and as things belonging to all of them were found there it is reasonable to suppose that all had access to it.

Among the things found there was canvas bag and in this were letters and a packet in which was a powder. Kemp says there was also a note book in the bag. When the packet containing the powder was put on the ground Biren made a snatch at it. But Kemp snatched it away from him, Biren was trembling and confused and when Kemp asked him what it was made of he mentioned some ingredients "sulphur, phosphorus and red paper." The Sub-Inspector, Latifuddin, represents him as also speaking of anti-sulphur. Possibly he means "sulphide of antimony." On chemical analysis the powder was found to contain sulphide of lead, sulphur and red paper. Major Black says that sulphide of lead and sulphide of antimony are very similar in appearance, though the former is not used in explosive mixtures, while the latter is. Singularly enough sulphide of lead was found in the detonating powder used for the Chandernagore bomb and also in detonating powder found at No. 134. Now in Ex. 479, which contains the ingredients of a bomb sulphide of antimony is given as one of the ingredients, and if this powder was intended for an explosive it is quite likely that the sulphide of lead was used by mistake or as a substitute, as appears to have been done in two other cases.

Major Black states that the powder in its thin state was not an explosive, but the addition of chlorate of potash, and amorphous phosphorous would have made it so. There are the other ingredients mentioned in the book, Ex. 479. The additions of them would have made the powder dangerous to keep. And Major Black's evidence that the additions of the first or both of these ingredients would have made the powder explosive support the evidence of the Inspector that Biren said "It is not yet a explosive." The Sub-Inspector also says that Biren's explanation was that he was preparing the powder as an experiment to see it was an explosive.

Of great importance are the two books Exs. 479 and 491. Both contain descriptions of a number of different kinds of explosives, with the proportions of their ingredients. The notes in Ex. 491 are rather fuller than those in Ex. 479, but the latter notes of these explosives are "practicable." Ex. 479 also contains the ingred

The search list no doubt was prepared in the Thana, but it was made from pencil notes made on the spot, and the father was given a carbon copy of the list when made. The search lasted a considerable time and there is nothing to raise suspicion in the fact that notes were made on the spot and a fair list in the thana.

Now when the things were found at the house,—as I said even now—the powder is not denied, it is only natural that the police should have asked what it was, and it is equally natural that they should have got some answer. It is not suggested that any one of the 3 gave some answer other than the witness say they did; and if this was an entirely innocent mixture one would have expected one or other of them to say that it was for matches or fireworks. But Biren denies making any statement at all and that it is to be observed is in a supplementary written statement put in on the day the arguments began and not when the accused were examined. Whether the powder was found in the bag or not is to my mind not a matter of much comment, though I believe that it was so found. Then it is suggested that perhaps these books belonged to some one else. It is true that letters to one Jitendra are found there, but there is no suggestion that any one else was or had been living there. The ordinary presumption is that things found in a man's possession are his and if these books did not belong to one or other of the brothers the natural presumption is that they knew of the existence of them, and when asked about them on the spot the natural thing to do would be to deny them if they belonged to some one else. Kemp says he found out who wrote them and though the prosecution could not ask what the accused told him on the point in view of the statement possibly amounting to a confession. It was not suggested by the defence that the answer was a denial of knowledge or authorship.

As I mentioned above Hem was writing enquiring the prices of chemicals at the end of April (vide Exhibits 804 and 805 with the answers Exs. 504 and 505). Some of the chemicals asked for could be used for explosives, all could be used for making matches and some suggests fireworks rather than explosives,

people to be anxious to learn to protect themselves. In Ex. 562, his daily routine, the central object is to better his physical condition.

There is only one document, which at all compromises him. Ex. 502, in which his name appears first on the list of members of a Samiti in which, among other exercises to be taught, are the use of dagger, sword, spear and bayonet ; and in this connection it must be mentioned that 3 wooden guns and bayonets were found in the house, and also two wooden swords.

In No. 15, a book of songs with H. C. Sen written on it, in a hand somewhat similar to his, was found, but it may have been taken by either of his brothers. The only evidence identifying him as at the garden is that of Suresh : he is not spoken to at any other place.

In the circumstances I don't think the evidence against him is sufficient for conviction.

BIREN AND SUSHIL.

For the defence it is argued that many of the documents found in the house show merely extravagance of language and wild ideas on the part of others, writing to Biren and Sushil. We find many laudatory letters to Sushil, making a hero of him because he was whipped for committing a criminal offence. I do not lay stress on such letters as that which quoting the "Sandhya" says Sushil shall let fly 1,500 shots in return for 15 strokes and play with fire, of which a great deal was made by Counsel for the Crown. But some of the letters shows that these are not merely the ideas of others, and even when not written by the accused themselves show that the writers are acquainted with the ideas of the accused.

In Ex. 541-19 one Jnanendra writing to Biren asks him "what arrangements are you making for picketing ? In Jitendra's letter you have written that picketing must be done in companies and hands. Then there is a letter by Jitendra obviously to Biren for it is answered by him 5 days later. Writing on 26th February,

1907, Ex. 521-4, Jitendra says "that these white people are not mindful of the humour of women is a fact." Then later he says the white people go out shooting and shoot one or two human Backas : for this they get a reward of Rs. 100 or 200 and he ends up. I have not been able to understand at all the meaning of the word Bonnet. It must be a word connected with the language of war. And why please keep up my spirit by keeping me informed about "war." Biren replies on 3rd March, 1907, Ex. 520-101. He says for the way in which the English have begun to oppress the people. I do not think their reign will last very long. To put down the oppressors an oppressed people does not require any physical strength. The English people are buying up all the rice of the country. But when as a result of this, excited by the pinch of hunger the people begin to loot the English firms, and when being deprived of their senses, they begin a terrible slaughter of the English who will stop them? What is our duty? To discuss these matters everywhere on the road, at the ghat, in the hut, in the market. When two men meet, to discuss these matters instead of laughing and chatting. When talking with villagers, the subject of famine comes up, to tell them of the oppression of the English, to talk to them of the Revenge. Only agitate and agitate... If you talk of the oppression of the English to your friends and tell them of the result of the oppression: they will in turn do the same. In this way the idea will spread throughout the country. Everyone from the rich men worth lakhs, to the ordinary cultivators will know of this "khubber." They will grow more enthusiastic as they know the result. "To know the consequence is half the way to cure." Then if Indra, Chandra, Barun, or Jam come down in person they won't be able to put out the fire in the country. The word Bonnet does not belong to the language of war. I have not been able to make any arrangement for our learning the art of war. Some time ago a notice was given about learning Military drill, wireless telegraphy, but I could not..... join as my name was enlisted in the society. I shall try and write about this later on." A violent letter telling the addressee how to rouse the people against the English. The reference to war and drill

is significant; a book found at the search is Ex. 500 which is a military drill book giving instructions in drill and manœuvres, attack, defence and military drill generally. In view of this letter I do not see how it can be reasonably suggested that their preparations were only to be ready to withstand possible attacks by the Mahomedans. And in connection with the fact that Biren had these ideas early in 1907 I would point out that in Ex. 479 at the top of the page in which the hieroglyphics appear is the date 1st Kartick 1314 is 16th October, 1907, and on the next page on which the ingredients for explosives begin the date is given the 20th Kartick. This would be about 3 months after Ullsakar, according to his confession, joined the society and began to make explosives.

In Exs. 541 and 541-10 written in October and November 1906 we have Biren writing about disappearance and telling Sushil in the second letter to be attentive to his studies as the most important duty to the country.

In Ex. 520-85 some one, whose signature is illegible, writes to Biren about giving "a package of those things (100 in number) to Satis Ray." It is not explained what are the mysterious things referred to nor do we know who Satis Ray was, but the postcard Ex. 538-3 in which Hem is sending a warning to keep clear of Probhash and the excitement is addressed to one Satish Chandra Ray, at 128-31-1, Kerani Bagan which was the address of Biren and Sushil.

Biren was identified at the garden by Satish and Suresh as at No. 4 by Satish and as at No. 23 by Suresh and Satish. Before the Magistrate Satish did not identify him as at 23 and I have pointed out that probably he was not seen at the garden.

As against Sushil the prosecution makes much of Exhibit 1436. One Probhash writing to some Sushil says, "one big will be had to-morrow. Please receive and keep for it Rs. 40, from the disciple of "Pahari Baba's disciples." And on the same paper is an endorsement by one Jogesh Chandra. Sushil Babu, please tell Biren Babu that I have not got that. It is expected to-morrow." Probhash denies writing the

letter and Sushil denies that he received it. The acquaintance of the two accused of these names is admitted, and it is singular that the letter was found in the Sen's house. It is addressed to Sushil and when he is directly addressed in the letter, which purports to come from a man whom he knows and the letter is found in his house, it is a reasonable presumption that he got it. What the references are we don't know and no explanation is suggested.

Ex. 478 is a diary of Biren. In it is a letter written by Sushil. It is dated 26th Poos, *i. e.*, 10th January. He says "Mother calls, so it behoves not to stay at home any more. Is this the time to learn at school? Now do I leave school but not my learning. I leave my house and relatives and perhaps I do this for ever. I shall again return to Calcutta, but not to my home in this life, if I cannot finish my work. I am going alone and must go alone, if no one follows hearing me. . . Many will say many things, parents, brothers and sisters will weep, but it won't do if I look to them no more. What do I fear and where is my sorrow, when I am going into the lap of her, who is the mother of 30 crores of men." And in the margin he writes "when you get this letter, I shall be far off and beyond your reach. Don't seek me in vain" In regard to this letter Mr. Hay argues that it is a mere extravagance of thought, that he only means to devote himself to the service of his country, perhaps by working for the famine stricken or for physical development. The letter, in Mr. Ray's suggestion to the question, is how he served his country by running away from home, but he admits that he does not know what Sushil meant. But Sushil is the only person who can explain, and he does not explain either that point or what is the matter about which he is going to risk his life for that is the only meaning to be attached to *going to the lap* of her who is the mother of 30 crores.

After this came notes by Biren of Sushil's departure on the 11th February, his return on the 17th, and on the 20th there is the note Sushil will go away to-morrow. Then below these entries there is an entry in pencil 44-2, Harrison Road, Narendra Mohan Sen Gupta or Surendra Chandra Baisnab." The suggested explanation is that 44-2 was a mess and Biren being in the habit of

selling books and pictures may have sold things at the mess and going there to get money due to him. This does not explain the meaning of these two names in the alternative. The connection of 44-3 with the garden will be remembered ; it was a place to be visited daily perhaps to find recruits or to get reports from missionaries. At any rate of the two names mentioned we find one in the garden that of Surendra in Ex. 423 a book bound there.

Mention of Biren's selling books reminds me of a fact which I forgot to mention in connection with him. Ex. 305-3 is a post card. Abinash shows that he was selling the book Mukti Kon Pathe. He then had 7 sets in hand and had disposed of two more by the day of the search. The sale of this book standing by itself would not go far much, it might be done for profit, but when taken in connection with the letter of his which I have quoted and the books on explosives it becomes more significant.

Ex. 494 is not an exhibit of much importance. It looks like a writing exercise, though the choice of subject for copy, "we have become rebellious" is not what one would expect for a child. Then again we have the fact that Sushil was not at home at the end of April. Biren even does not know his address. He writes to Aurobindo on the 28th April to say his father wants to see Sushil, but he himself not knowing Shushil's address wants Aurobindo to send him. He expects Aurobindo to be able to get hold of him as he sends money. Then we find Sushil just after the arrest with his eldest brother, Sirish. The letter writing from Kalama on the 3rd May says Sushil will leave to-morrow, and on the 5th he writes to say that Sushil started the day before (vide Ex. 520-39 and 520-21.) Sushil's name is also found in Ex. 1249 found at No. 134 against an item of Rs. 8. Counsel for the Crown laid some stress on Exs. 520-4, 520-7 and 520-64. The first two are stamped envelopes which have never been through the post addressed to Jagat Chandra Pal at 20, Patuatola Lane. This is the address of the witness Ramesh Chaudhri who collected and sold seditious books. The two envelopes are addressed by the same hand and in the corner of one are the words "from Durga Dass Sen" with

the Siva trident in the corner of the other, no name is written, but at each corner of the envelope appear the Siva trident. Exhibit 520-64 is a slip of paper signed by Durga Dass Sen, with the Siva trident at the top of the slip. The slip also appears to be in the same writing as the addresses on the envelopes. The slip is to Biren Babu and says "I came here last evening at 7 p. m., meet me at Machua Bazar." We have it that Durga Dass was at the time of the search given as another name of Sushil. In Ex. 21 there are two entries against the name D. Sen on the 4th March and 6th March. It will be remembered that Dinesh Chandra Ray, *alias* Prafulla Chaki, gave the name of his companion on the first occasion as Durga Dass Sen, and on the strength of the slip of paper and the entries in account, Ex. 201, with letter Ex. L. Norton suggests that Sushil was Prafulla Chaki's companion on his first visit to Mozufferpur.

No doubt Sushil's feelings toward Mr. Kingsford were very bitter, but the facts shown hardly warrant the conclusion that Durga Das and Sushil were the same. It is highly probable that the writer of the slip was Sushil, because of its similarity with the addressed envelopes found at Senpara, and if so his writing to his brother as Biren Babu suggests the desire to bide his identity, but the connection with Durga Dass at Mozufferpur is not established. In any case it would not be fair on the accused to draw such an inference against him considering that this point was raised only in the arguments at the end of the case. It was sprung upon him at the last moment and he had no opportunity to clear the matter in any way during the trial. Kishori Mohon Banerji was not asked if Sushil was the man, and Kheman Kahar, the chowkidar, was right, then Durga Dass who came on the first occasion was Khudiram.

Sushil was identified at the garden by Satish, Chandi and Suresh, at No. 4 by Satish, and at No. 23 by Satish. I have already said that the identification by these witnesses must be accepted with caution and Satish did not identify him before the Magistrate as seen at No. 23.

What we then have against Biren is his behaviour in connec-

tion with the powder and the finding of the two books dealing with explosives, the powder containing some of the ingredients mentioned as the ingredients of a bomb. We have in the books also hieroglyphics suggesting the idea of writing in cypher. Then there is his association with Probbhash, an inflammatory speaker, the letters from which I have quoted, and the name Biren being found in Ex. LXXVI and XL-12 in both cases next to the name of Sushil, which raises a strong presumption that the reference is to the two brothers and not to other persons. Lastly, the reference in his diary to 44-3, Harrison Road which supports the theory that he is the person referred to in the garden books and his connection with the sale of seditious literature.

As against Sushil we have the letter about his disappearance to serve his country in a manner which may risk his life, his disappearance from home in February, his wandering about at the end of April when his family did not know his address ; the fact of the name Sushil appearing in conjunction with that of Biren and also itself in the garden books and in the document Ex. 1246 found at No. 134. Finally we have the fact that he was continually being idolized for having been whipped—a fact such as would naturally turn his head especially considering the reason for which he was whipped in which connection the fact may also be added that he was the recipient of a lathi from the notorious Leakat Hossein, a lathi provided with a spear head at one end and heavily weighed at the other, not the sort of weapon to use for ordinary physical exercise.

It is true in regard to both these persons that their letters do not mention any of the centres of conspiracy ; but I think the facts which I have mentioned sufficient to bring home to both in connection not merely with the garden, but with conspiracy. Biren's connection is firmly established by the books on explosives and his constant association with Sushil, not only outside but in the garden, makes it impossible that one brother should have been ignorant of the true objects of the society, while the other was cognizant of and participated in them.

PROBASH CHUNDER DE.

The accused Probbash Cbandra De was not seen at any of the places connected with the conspiracy. The case against him is that he took part in the publication of the *Deshcharjya*, that he made violent speeches, that the letters Ex. 1436 and 1433 are seditious, that he was suffering from burns about the hands and face, and that he was present at searches of the *Navasakti* Office and the *Sumati* press and that he was twice seen at the *Sandhya* office.

Now even if accused had given no explanation at all of these matters there would not be sufficient evidence to convict him. In fact he has given an explanation about burning his face and hands, which is a possible explanation and the prosecution has not established the fact that the injuries were caused in any other way.

The letter Ex. 1433 seems to require explanation from the reference to "old men being frightened at the thing that was to have been done yesterday." The expedition at the time of the *Ardhodaya* Jog to rescue coolies from the dens of coolie recruiters, and it is argued that the times and circumstances were sufficient to frighten old men, but no impetuous and enthusiastic youths. The explanation is a possible one.

I have already referred to letter Ex. 1435 in dealing with Sushil's case; Prabhash denies writing it. It is impossible to say, from the letters which he admits, that he wrote this though the fact that it was found with Sushil, with whom Prabhash was intimate, suggests it was his. We do not know what it means.

His presence at the search of the *Navasakti*, even assuming the paper to be connected with the conspiracy is explained. He had been a proof reader and being dismissed had gone to get his pay. The explanation is a possible one.

He admits being at the *Sandhya* office on one occasion but not other. On the one occasion he says he was there in connection with recruiting volunteers for the *Ardhodaya* Jog. We know that volunteers were recruited there.

With reference to the search at No. 68, Maoiktola says he was going to see his friends at 67 and hearing a row went in No. 68. In fact there was a man at No. 67, and Lahiri admits that he only saw him in the passage leading to the outer courtyard in No. 68.

The letters Ex 1235-1238 which were found in the garden and on which the prosecution laid stress are nothing against him, though they might be against the recipient of them, they were written by him not to him. He says that Aurobindo referred to is not the accused but another man.

His speeches might well justify a prosecution for sedition, but they even with the suspicious letters referred to, assuming that his explanation is not true, are not sufficient to connect him with the conspiracy, nor in the publication of the Deshacharjya. In those days seditious works commanded a ready sale, and he says he wanted to make some money. A keen adherent of swadeshi, a hot headed and excitable young man his speeches may well have been with those of others prompted by the impunity which he saw other and elder men were enjoying.

There is not sufficient evidence to connect him with the conspiracy.

SUDHIR KUMAR SIRKAR.

I next take the case of Sudhir Kumar Sirkar. In one respect he is one of the most important of the accused as the prosecution attempts through him to find an additional link in the case against Aurobindo. He was arrested on the 10th of May at the house of his father who was Civil Hospital Assistant in charge of the dispensary at Khulna. He made a statement on the 11th to the Magistrate.

He stated that he was at the Khulna Zilla School till about 2 years previously and he then left first "because of the Swadeshi agitation," and secondly because he failed in two subjects in the school examination. His father sent him to Sahibganj to his brother Narendra who was assistant Jailor at Bhagalpur, to wish him either to get employment or continue his studies. He had no

mind to read "at the Calcutta University" or to get official employment. He therefore left his brother and went to Calcutta where he became acquainted with Barin. He says he met Barin at the *Yugantar* Office, at 41, Champatola 1st lane. Then he assisted in publishing the paper. He stayed a month, working without pay and Upen gave him some books to read, including the works of Mazzini, Garibaldi, Desher Kotha, Upanishad and Gita. Then he returned to Khulna and spent most of his time there, but used to come occasionally and spent 7 or 8 days at a time in the garden at Maniktola. He got to know it when at the *Yugantar* office. Barin took him there saying there was "a mission for religion, self-abnegation and political purpose." Upen used to teach him there from the books which he named. The political purposes of the mission were "to serve the motherland and serve the people." He said that he left the garden house about 2 months previously, since when he had been at Khulna. He said he intended to teach illiterate people a religion.

This statement was withdrawn when the Magistrate examined him on the 13th August. He then stated that it was not true that the police had made him make it. He declined to say in the Magistrate's Court in what circumstances he made the statement, adding that he had no connection with the garden. He refused to make any statement to explain the evidence against him saying that he would say what he had to say at the Sessions Court.

Here he also refused to answer any questions but put in a written statement. In this statement he says nothing about the circumstances in which he made the statement to the Magistrate. Counsel suggests that Inspector Alams who arrested him, treated with exceptional kindness and let him know that the mention of names and places would be good for him. Alams was asked whether he told Sudhir if he took his advice he would get off or that he made a clean breast of everything it would be better for him. Alams denies both suggestions but states that when he was examining papers found in his house he asked some questions and Sudhir did not wish to answer them in the presence of his father. The Magistrate warned him before making his

statement and there is no reason to suppose that the statement was other than voluntary.

Of parts of the statement we have corroboration from his brother Norendra who tells of the attempt to get him employment in the railway at Sahebganj and of the fact of his sudden disappearance from that place. His brother seems to have given him good advice in vain even pointing out to him that he could push swadeshi ideas contemporaneously with serving in the railway. He warned Sudhir against "picketing," an expression which in giving evidence he tries to note down. He unnaturally says that he does not know that Sudhir was living at the *Yugantar* office, though it is clear that he expected to find him there or with Sisbir; in fact, he thought a letter to him through Sisbir would reach him. And we have it from Ex. XXXVIIA that Sisbir was living at No. 41, Champatola Lane about that time. From his brother we not only get some light on Sudhir's movement, during 1907, in spite of his brother's attempt to screen him, but we also get an insight into his predilections.

We also get Sudhir's name in the garden book Ex. LXXVI. It occurs first by itself, then in each of these lists and again in the list under "the first batch to consist of." In Exs. 239 and 667 we get initials which might apply to him, though they might equally apply to other of the accused.

A very important part of the evidence as against him concerns his connection with Sil's Lodge. This is a house standing by itself and at a distance from any other habitation, the nearest house, except for a gate house at a level crossing on the railway being half a mile off. It is about half a mile from each of the two villages, Raidih and Ghoslas, and to get to it from Calcutta one would take the E. I. R. to Baidyanath Junction and a light railway thence to Deoghar. We have not the exact distance from Deoghar to Sil's Lodge, but we have evidence that Raidih is $2\frac{1}{2}$ miles from Deoghar, so that Sil's Lodge would be from 2 to 3 miles from Deoghar.

This house belongs to the witness Debendra Nath Sil. He let it to Khudo Dai, a wealthy midwife, in the month of Aswin,

in their possession. Now the house had not been occupied since the persons, who it is said were members of the conspiracy, left it, so it is clear that the things found were either theirs or had been dishonestly introduced since. In this connection two arguments were advanced (1) that the house was not locked when the police came to make the search, (2) that the Inspector did not go there at once on his arrival at the locality, the suggestion being that the things found were then introduced.

As to the first point the gateman who used to keep the key of the house, said that there was no padlock on the door. He evidently is an unwilling witness and tries to make out that Debendra left the key with his son a boy of 12, a search witness. No. 49 also says that he did not see any key brought. This is directly in contradiction of what he told the Magistrate, and he admits that if he told the Magistrate that the gateman brought the key it is true. Both witnesses say the door had a chain to fasten it and there appears to be no reason why the gatemen should have been brought along with the key and then told to open the door if it was merely held by a chain and no lock. It was not suggested to the Inspector that the front door was not locked, the suggestion made to him was that access might have been obtained by the windows or through the back door. The Inspector says the windows were all shut, and the door leading from the house into the courtyard at the back was bolted inside, and the door in the wall leading into the courtyard was also bolted inside. No doubt the wall could have been climbed, it is only 5 or 6 feet high, but even then access was not obtained to the house.

And as regards the delay in going to the house it appears that the Inspector had to make a number of other enquiries, and no doubt whatever enquiry he made first it would have been suggested that he ought to have made it last. There seems no reason to doubt either the *bona fides* of the search or the fact that the things found in the house were left by the Babus who were said to be occupying it as the tenants of Debendra.

Among the things found there were 9 small flat pieces of metal

similar in all respects to a very large quantity of metal found in the garden, apparently ready cut up for melting for the purpose of shell manufacture.

Another thing found was a label bearing the name of C. J. Hewlett & Sons, London. On this the prosecution lay great stress as an exactly similar label was found at 15, Gopi Mohan Dutt's Lane. This search at No. 15 was held, however, on the 7th June, a month after the accused had left. It is true that no one occupied the house in the interval. Witness No. 25, who was present at this search says he was taking a lease of the house, but the conditions on which he took it are curious. The person who let him the house, lived on a few doors of No. 15 and from the position of his house could command a view of it. He says no one entered in the interval, but considering that the house was not locked it may have been entered without his knowledge. And though the label was found among some rubbish, among which was also a paper containing notes on logic, suggesting that the things found were *bona fide* leavings of the last occupants, as it is possible that the findings were put in subsequently to the 2nd May, they should not be accepted in evidence. This applies to exhibits 819 to 821.

For my part I think both sides made too much of the similarity of the labels. Exhibits 624-182 are two bottles of ammonium chloride found at No. 134. These bottles bear two seals of Hewlett & Sons, a round one at the bottom of the bottle and an oblong one over the stopper. The label found at Sil's Lodge was a round one, the one found at No. 15 was an oblong one. The finding of a label at Sil's Lodge exactly similar to one at one end of a bottle in No. 134 is not made of any more importance by the fact that a seal similar to one at the other end of the bottle was found at No. 15. Too much stress is laid on the shape of labels, if it is a strong point that labels of the same chemists are found at Sil's Lodge and No. 134, it does not really further the case, that another label of the same chemist is found at No. 15, so far as it concerns the connection of Sil's Lodge with the conspiracy.

One of the plans found at No. 134 is exhibit 641A. In the

corner is written "white and very small pucca house very near the lines : one house surrounded by a wall." The plan consists of a number of lines with letters marked at various points B. M. D. R. and there is a cross mark. If B. N. and D stand for Baidyanath Junction, Madhupur and Deoghar the relative positions are correctly marked. R might stand for Raid, we don't know in what direction that was with reference to Sil's Lodge.

In Ex. 263, a note book found in the garden, there is a very rough sketch on one of the pages, a few lines and letters B Jc, M D and a mark close to D. The relative positions of B Jc, M D in this sketch are those of Baidyanath Junction, Madhupur and Deoghar. On the line between B Jc and M is marked 18 m and 18 miles is the mileage between Baidyanath Junction and Madhupur stations and on the line between D and B Jc is the figure 6. The distance between Baidyanath Junction and Deoghar is 4 miles and as I pointed out before Sil's Lodge would appear to be 2 or 3 miles from Deoghar.

There is another connection between the garden and Sil's Lodge. Ex. 770 is a copy of Indian's national anthem. It was found at Sil's Lodge. On the back is written P. C Chaki. There is evidence to which I shall refer that Prasulla was seen at Sil's Lodge. Ex. 276 is a gunny bag found in the garden. It is marked P. Chaki, Baidyanath, E. I. R.

We thus have material objects found at Sil's Lodge indicating a connection with the garden and with No. 134 and we have the correspondence and map found at No. 134 and the sketch in the book and the gunny bag found in the garden indicating connection with Sil's Lodge.

The evidence as to the presence of persons connected with the conspiracy at Sil's Lodge is that of the then postmaster at Rohini and a postal peon. The postmaster says that letters used to come for persons of the following names at Sil's Lodge : Sudhir Kumar Sarkar, Sailendra Kumar Ghose, U. V. Lele, Prokash Chandra Bose. The initials of Lele he later corrected to V. B. There is nothing in this, to him U and V are practically the same letter and in Indian alphabets, at least in Bengali and Hindi, V and B

are frequently interchangeable letters. Apparently there was not a daily delivery at Sil's Lodge, so on the days when the postal peon's beat did not lie in that direction persons from Sil's Lodge would come to the post office for letters. Sudhir, he says, came daily, the accused Sailendra came occasionally. A servant and a man with long hair also came sometimes.

The peon says he knows the names of some of the Bengalis who were there, they were Prafulla Chaki, Sudhir Kumar Sarkar, Prokrish Chandra Bose and Upendra Nath Bannerji. He identifies Sudhir and the photograph Ex. 31, as a photo of Prafulla Chaki. When Ullaskar was called out of the dock and shown to the witness, he also said he saw him there but did not know him by name. Similarly when Upendra Nath Bannerji was called out in cross-examination he identified him. Witnesses of his class frequently do that when shown a man suddenly. However, he did not identify either of them before the Magistrate. But there is corroboration to show that his identification of Sudhir is correct. Postal peons have a book in which when letters are delivered at a village they have to get the signature of the village headman or some one to whom a letter has been delivered. One of the entries in this book is S. K. Sarkar. The witness says Sudhir wrote it, and Sudhir's brother says he believes the signature, except the S to be in Sudhir's writing. We thus have corroboration of the postman's evidence as to Sudhir.

Nor is there any reason to disbelieve the evidence of the post master ; he had ample opportunity of seeing Sudhir and remembering him.

When the police went to enquire, this witness produced two postcards and a slip of paper bearing request to forward letters and papers that were addressed to Sil's Lodge. One Ex 780-2 is not dated and the signature is illegible ; it is a slip of paper and asks the postmaster to send all the letters to 30-2, Harrison Road, c/o L. M. Roy and newspapers to Khulna Charitable Dispensary. Sending letters to a different address to the newspapers suggests a community of interest in the letters. The next in point of time is Ex. 780-4. It is from Calcutta, 30-2, Harrison

Road, c-o. L. M. Roy and is signed "Prokash Chandra Bose" and in the corner is "Sil's Lodge." It says he asked the postmaster before to redirect all letters and papers to the above address, but he has not done so, and asks him to do so. The writer has not given the date but there is a Calcutta postmark of 1st April. Ex. 78-3 is another postcard from Khulna Hospital, saying the writer had written twice to redirect letters to Khulna and reminding him of the fact and asks him to redirect all letters and papers to Khulna Hospital. The signature is illegible but under the writer's signature is "Seal's Lodge," Rohini. It is suggested by the defence that all 3 were written by Prokash Chandra Bose, whoever he was, and attention is called to the words "Seal's Lodge" in the last-mentioned exhibit as showing that it could not come from Khulna. Those words may be merely a reminder as to where the writer came from him. On the card are two postmarks of Baidyanath, Deoghar, two of Robioi and one undecipherable. There is nothing to justify the supposition that all the 3 were written by the person calling himself Prokash. On the contrary the signatures in Ex. 780-2 and Ex. 780-3 appear to be the same; though they are illegible. The two are not wholly consistent, in that one asks for letters and papers to go to different addresses and the other asks for both to be sent to Khulna. It is very probable that though written by different persons all 3 communications were on account of the same set of papers as the writer of Ex. 780-2 and 780-3 in the first instance asked for letters to be sent to No. 30-2. Here I would again call attention to the fact that No. 30-2 is connected with the garden and to the fact that on Ex. 256 we find the name Roy at that address, though in that case the initials are M N and L N. Sudhir's brother was asked about the writing on Ex. 780-3. He says it does not resemble Sudhir's writing and at the same time that it has some resemblance. He knows of no other Sudhir Kumar Sarkar living in the Khulna dispensary compound at that time but the accused Sudhir. He was very unwilling to admit that his brother went to Baidyanath in March, 1908, but was bound to admit it on the fact that he received a money order from him from Rohini. In

the accused's written statement the explanation is offered that in March he stayed a few days at the house of Raj Narain Bose. He denies all knowledge of Sil's Lodge.

There is another fact connecting Sudhir with this place early in March. A money order for Rs. 15 was sent to Upendra Nath Banerji at the garden on the 2nd March. The sender's name is written S. Ghose. In that part of the money order form which is cut off and returned to the sender, on which the sender's address has to be written when the money is sent, was the name Sailendra Kumar Ghose.

The postmaster says that Sudhir brought the money and the form filled up, struck out the name Sailendra Kumar Ghose and wrote S. Ghose; that was what was written on the upper portion of the form when Sudhir brought it.

There is no reason to think the story is untrue that Sudhir brought the money order. The money order purported to come from Sailendra, and if the post master was willing to give false evidence to suit the prosecution it was more important that he should fix the identity of the accused Sailendra Nath Bose with the person calling himself Sailendra Kumar Ghose than to bring an additional item of evidence against Sudhir whom he was in a better position to identify owing to his constant coming to the post office for letters.

Ex. C 1007 is a counterfoil kept by the post office of a receipt given to the sender of a money order. In this the name of the sender appears to be written Sudhir Chandra Sarkar. The postmaster says it is not "Sudhir Chandra" but "Sudhir K". He says he wrote it in a hurry. At the bottom is written Seal's Lodge. This appears to be in rather fainter ink than the rest of the writing in this counterfoil. The suggestion is that it has been written for the purposes of this case. The postmaster denies this, he suggests the ink may have run short. It may be that it was blotted immediately. The suggestion in the first instance was that this counterfoil was in respect of a money order sent by some other person. But that suggestion was defeated as soon as Narendra admitted getting the money order to which this counterfoil refers.

The truth of the post master's statement being established on the one point, there would appear to be no reason for disbelieving him on the other. This money order was sent on the 9th March. His brother says that Sudhir had just left him at Bhagalpur, in the way to Khulna.

* Exhibit 77 is a postcard addressed to Upendra Nath Bauerji, Ghoslas, Seal's Lodge, Raidi, Rohini P.O., Baidyanath, Deoghar, E. I. R., signed Sudhir, and bears a Calcutta post mark of 11th March, and Rohini post mark of 12th March. It was found at Sil's Lodge. It runs "respected Upen Da, arrived safe, Sukumar Da is expected on the 5th and 6th Chaitra. Explained to Bara Karta. According to his orders I ask you to come. Start on reading this. This is my prayer, not mentally good" There is a postscript, "The condition of the garden is bad, monkeys are entering. There is possibility of spoiling. The boys are like that." If this postcard be compared with Ex. 780-3 it will be seen that the words "Lodge, Baidyanath, E. I. R." and "Deo" in Deoghar bear a very close resemblance to one another, it is also noticeable that the writer of 774 spells Deoghar with an O in the last syllable, so does the writer of Ex. 780-3. In one case he adds an 'e' at the end. Therefore there is no question that both are written by a Bengali. Again the "r's" in the address of Ex. 774 are just like "r's" in "March" and "Sircar" in Ex. 457-1. I regret that Narendra thinks the signature to be Sudhir's in Ex. 1457 and like some of the "r's" in Ex. 780-3. In the latter Exhibit two kinds of "r's" are used.

So much for the similarity of writing, the internal evidence of the letter shows that the writer has just arrived from somewhere. Nogendra says Sudhir had left Bhagalpur for Khulna just before sending the money order. The money order is sent on the 9th; a person called Sudhir writes on the 11th to say he has just arrived and make no reference to a garden, writing to a person bearing the name of one of the principal figures in the garden, and there is evidence that same one of that name was at Sil's Lodge. The prosecution suggested that the word "monkeys" might refer to the police. So went this suggestion the defence

got from some of the prosecution witnesses that in fact monkeys used to come to the garden. This supports the idea that the garden referred to in the letter is the garden, which is the central depôt in this case.

It does not follow that because Sudhir told his brother he was going to Khulna that he did in fact go. He may have returned to Sil's Lodge, and sent the slip 780-2 from there. In fact in Ex. 201 we have, *no item* "See Babu, Train hire Rs. 5." Sudhir was identified as seen at the garden by Satish, Suresh and witness No. 165, by Satish at Nos. 4 and 23 already pointed out more than once that the identification by these witnesses must be received with caution.

I have pointed out that the accused Sudhir is identified as being at Sil's Lodge, that there is every reason for thinking him to be the person who asked for letter papers, and subsequently letters and papers to be re-addressed to Khulna Dispensary: that hence there is every reason for thinking him to be the person who wrote Ex. 774, with reference to the garden. I have also pointed out that the name Sudhir appears in the garden book, Ex. LXXVI.

I have pointed out some of the evidence connecting Sil's Lodge with two of the important places connected with the conspiracy, it is Ex. 658, a postcard from Debendra to Prohash Chandra Bose, found at No. 134: the map Exhibit 642 found at No. 134, on the back of which is the name Prokash Chander Bose and the Sil's Lodge address: an entry in Ex. LXXVI. "U. D. at Baidyanath," immediately under which is "Manufacture B. G. to teach him the mechanical part of the thing," in connection with which I would refer to the finding of the pieces of metal: Ex. 1006, a money order for Rs. 50 to Upendra Nath Banerjee the signature of the recipient being witnessed by Indu Bhusan and the fact of V. B. Lele receiving letters there, corroborated by the books with regard to a registered parcel sent to him, c/o Prohash Chandra Bose, and the existence of the name V. B. Lele in Exhibits 667 and 382.

What could have been the object of taking their house in an

places where those presses were according to the declarations in regard to the papers.

It will be seen that "Yugantar" for the whole period of its existence covered by their case, except for two months at the start, 3 months in 1907 and the period from the 30th October 1907, till the 28th January, 1908, when it was printed at 28-1, Mirzapore Street, for which there is no press declaration, was printed at the press which originally went under the name the Sadhana Printing Works, subsequently changed to the Sumati Printing Works.

In all this part of the case in connection with the presses, papers and the Chatra Bhandar the prosecution has been under considerable difficulties. There is no doubt that in nearly every case the witnesses have not disclosed facts that were within their knowledge and has misrepresented other facts. And it is not only in this branch of the case that the prosecution has so suffered though it is in this branch that the difficulty has been most evident. It may be partly due to the fact that the witnesses were afraid of incriminating themselves. In some instances I do not think the prosecution showed good judgment in calling the men, who were called for it was quite obvious that they could not be expected to state what the prosecution hoped they would say. Perhaps they were called in the hope that if they failed to be satisfactory, cross-examination of them would be allowed and the denied facts elicited. But whenever this cross-examination was asked for I refused it, generally on the ground that the prosecution must have drawn that the witnesses would be hostile and therefore was not exhibited to cross-examine, as the hostility should not have been unexpected. The attitude of the witnesses may partly have been due to sympathy with the accused in general and the desire to help Aurobindo in particular. For there can be no doubt that the majority of the witnesses and probably whole of educated Bengal in general are in sympathy with the accused, I do not say with their methods, but with their objects. And it is only natural that they should be. And wholly apart from the natural desire for independence the unfortunate question of racial prejudice was bound to arise in such a case as this. It was inevitable that this

was considered for printing the "Yugantar" and "Navasakti" surreptitiously, under the Press Act, and though an explanation is offered for that, which may or may not be true, it is not clear what happened to his press, and we find his name mixed up in another undertaking to which I shall shortly refer.

It is quite clear that if it is proposed to conduct a revolutionary campaign by means of a newspaper, it is essential for the promotion of the campaign to have a press which will always be willing to print their doctrine. We have it from the witness Bissessar Sen that Bhupendra told him the "Yugantar" was going to get a press of its own. Shortly after that it commenced to be printed at the Sadhana Printing Works on the 28th May, 1907 and continued to be printed there till the 30th July, 1907. It does not, according to the "Yugantar's" declarations, appear to have been printed again at their press till the 28th January, 1907, but the pleader for Nikhileswar says that his case is that he in fact printed it at the same press he having bought the press, from the beginning of November; in the interval it was printed at the Saraswati Press. The men of the press would of course not be responsible for the failure of the "Yugantar" to make its declaration of the place of printing, and if Nikhileswar's case be correct the "Yugantar" was only separated from their press for three months between May, 1906 and the date of the arrests and those three months began immediately after Bhupendra was convicted and the Sadhana press confiscated by order of Mr Kingsford, an order subsequently set aside by the High Court.

The first omen of the Sadhana Printing Works was Harish Chandra Ghose. It happens that he is an absconder, a warrant having been out against him for a long time. The first declaration of the press was on 22nd May, 1906, but he did not become the declared printer of the "Yugantar" till the prosecution of Bhupendra began. He first became the declared printer on the 6th May, 1907, at 41, Champatala 1st Lane. This is the very day in which the press passes ostensibly to Abinash. The press remained at No. 41 till the 8th July, 1907, when it was removed, according to the declaration, to 176-3, Bow Bazar Street. Now at the

of the Yugantar. In this incident Pabitra gives a futile explanation. He says that when the prospectus was issued with their advertisement on the cover he complained of it to the officers of the Chattra Bhandar though not to the directors when he merely asked why it had appeared. The answer he got was that the Yugantar was paying the cost of the cover, therefore the printing would be less costly. This explanation does not commend itself. It is not explained how the printing of the prospectus itself will be cheapened, because the Jugantar supported a cover for it with its own advertisement. It is also noticeable that the name of the press which printed it does not appear in the prospectus. This advertisement advises perusal of the "Yugantar" which inspires a spirit of liberty and leads the way forward to "National Freedom." This prospectus has been issued at the end of 1906.

THE CHATTRA BHANDAR.

The Chattra Bhandar, or Students' stores appears to have been started in November, 1904. Though the prospectus of the Chattra Bhandar, Limited, speaks of its being started in 1903, the other date appears to be correct. Ex 1362 a prospectus of the original concern speaks of its being extended on its second year; this is dated 1st November 1905; and again in the first annual report of the Limited Company it is spoken of as starting in November 1904. In 1906 it was turned into a Limited Company, the memorandum of the association being signed in 1st August, 1906. One of the provisions in the articles of association was that 30 per cent. of the profits was to be given as grants for the general good of the country and the welfare of the people, or to persons or solicitors approved of by the Board of Directors. Much stress was laid on this provision by the prosecution, to my mind unnecessarily for not only do we get evidence of other instances of such provisions but we have the fact that this provision was inherited from the concern before it was formed into a Company and there seems no reason to think that that concern was intended to assist in promoting a revolution. There is no evidence whether any other

concern devotes so large a share as 30 per cent. of its profits to purposes of public welfare, no matter whether those concerns adopted such a provision from the Chattra Bhandar or whether the latter copied them. It seems that the Directors of the Chattra Bhandar claimed originality for in their first annual report they speak of it as a special feature.

The memorandum of association sets out the objects of the Company. They are wide enough to cover any sphere of legitimate trade and though one of the objects is set out as to carry on business as general merchants, importers, exporters: it is admitted by Pabitra that there has been no dealing in foreign goods and it is not intended to import foreign goods though that would be done if Swadeshi goods did not sell. In fact to deal in foreign goods would be contrary to the principle of the original concern and of the views of the Limited Company promotes as set out in their prospectus, and foreign to the idea which prompted a provision of 30 per cent. of profits used for the welfare of the country. Now however harmless the memorandum and articles of association appear there is no doubt that a very larger part of the business of that Company consisted in publishing and spreading seditious literature, and it is here that we get the significance of the fact that 4 of the persons, who appear in Ex. 1368 out of the nine partners in the printing concern, figure in the list of directors and auditors of the Chattra Bhandar, and among the four are Nikhileswar and Iodra Nath Nandy. And the prospectus must have been issued somewhere about the same time as the partnership or proposed partnership was evolved, and when the first annual report is issued we find the directors are not the same as those mentioned in the prospectus; some of the original names have disappeared and 3 fresh names come in, most prominent of all being that of Subodh Chandra Mullick and on account of the distributions of profits in the annual report we have an item of distribution at 6% to the shareholders and a sum which in fact does not represent 6% of the value of the shares then taken up. And Pabitra says 6% was put down to look well, in fact the item does not amount to 6%.

SUBODH CHANDRA MULLICK.

In the course of this case I have heard a good deal about Subodh Chandra Mullick and proof was promised that he was one of the promoters of the revolutionary movement. Subodh is not before me, he is undergoing deportation and perhaps the less said about him the better, but a great part of the prosecution case against Aurobindo was based in the strength of his connection with Subodh.

Now in summing up the case Mr. Norton put forward practically no argument at all to show that Subodh was connected in the conspiracy. I hope I am not doing him an injustice in my notes and I took fairly copious notes but all the argument that I find about Subodh is that he was associated in starting the "Bande Mataram, Limited," and that he was the largest shareholder in the Chattra Bhandar, and that the "Bande Mataram" office was very conveniently situated at the back of Subodh's house at 12 Wellington Square. And it was in connection with Subodh, and Aurobindo that much of Mr. Norton's address ceased to be argument and became mere assertion. Subodh's connection with the Chattra Bhandar becomes suspicious when we realise the turn that the Company's activities took, but what concern he took in the management of it we don't know. Pabitra certainly conceals his knowledge of the early days of the Company. Subodh in the first instance was ostensibly only a witness to the signatures of the promoters, but we know that within the year he became a director, while one of the original managing directors, Bhupati Goswamy, seems to have dropped out, at least he does not sign the first annual report. Subodh was associated with Aurobindo as a director of the "Bande Mataram, Limited," and he evidently to a large extent forced that venture, which was admitted is more a political than a commercial venture, but are we to assume that because Subodh was connected with both, and because his connection with one seems suspicious, therefore the other was also of a revolutionary character. In the search of his house, 12, Wellington Square, on the 10th May very little of a compromising nature was found.

of this mortal life." And in the prospectus itself is a reference to "sacrificing life for the deliverance of the once glorious but now fallen land." And it is on the cover of this prospectus that we get the "Yugantar" advertisement to which I have already referred.

Pabitra denies that the various Chattra Bbandars in other parts of the country were in any way connected with the Central Chattra Bhandar. But the establishment of such was set out as one of the objects in Ex. 1362 so we find that has actually happened which it was the avowed intention of the original concern to bring about. Pabitra tries to make out that he means nothing about this document (Ex. 1362) but Raghunath gives him away. Raghunath admits this document and in it Pabitra is one of the original directors.

THE SANDHYA.

Of the papers other than the "Yugantar," the "Sandhya" was the worst. Its main object appears to have been personal vituperation of the greatest character. It is not shown to have been connected with this conspiracy by any association with persons connected with the conspiracy, but it is significant that in May, 1907, it was talking of bombs being manufactured some of which might kill 10 or 20 people. The main importance of it is to attempt to connect it with the Navasakti through the person of Brama Bhandhab Upadhyaya and so to complicate Deba Brata's case. This attempt is founded on the misinterpretation of a letter in which Manaranjan Guha, the Editor and Proprietor of the "Navasakti" is lamenting the death of Brahma Bandhab, at the same time seeking for an Assistant Editor for his paper. The mistake has arisen from reading together two sentences which in the original are separate, the second sentence beginning entirely a new paragraph. The only other point to show the connection between the Sandhya and the conspiracy is that the "Yugantar" was printed at the same Press as the "Sandhya" for 3 months.

THE "NAVASAKTI."

The character of the Navasakti appears to be quite different from that of the "Yugantar." There are passages in the articles put

to point out to our country the ways and means, how its full maturity will be attained. (2) Now the time has come to understand what is the desire, what are the "Mantras" of, how to worship and who is the Guru, of that Jngadharm which will be celebrated in India in this new era. This time we will have to understand fully that our political investigation is a part and parcel of our religious worship. "Navasakti" is rising up in a new vigour." This is a very significant notice affecting, not so much the previous character of the "Navasakti," for the hint is that its management was inefficient, but Abinash's. The oews of freedom is to be taught by the old Managers of the "Yugantar." The pleader for Abinash suggests that the word translated "former" means the "earlier" as opposed to more recent Managers of the "Yugantar" and he uses this to show that Abinash in fact gave up connection with the Jugantar towards the end of 1907. How the Jugantar preached the news of freedom I have already pointed out, and it is hardly to be expected that the author of the Modern Art of War and the compiler of the Mukti Kon Pathe would be any less violent in his doctrines than the earlier issues of the "Yugantar" or his own than recent publications.

Many of the accused were seen at one time or another going to or at the "Navasakti" Office.

So far as definite dates are given, and they are given in several instances, in only one instance is any of the accused said to have been seen there before the old management ceased. The last issue was on the 10th or 12th Baisakh, *i. e.*, 23rd or 25th April. Hem Dass is said to have gone there once before that. On the other hand the frequent visits of accused spoken to after that suggests that the new management of the paper was to be of a different nature to the old, or that some individuals connected with the conspiracy had arrived there.

It was suggested by Counsel for the prosecution that the "Navasakti" was started to take place of the "Yugantar" in case that paper was killed by the prosecutions for sedition. That cannot be connected for Manaranjan was looking for a Sub-editor before the prosecutions began. Finally though the "Yugantar"

prosecutions began in the middle of 1907 and went on steadily, the only prosecution in the case of the "Navasakti" was at the beginning of 1908. And in Ex. 1278 Manaranjan, writing on 29th October, tells Bama Charan to be careful as to what is written in the paper and points out that there are objectionable passages in that day's issue.

THE BANDE MATARAM.

The "Bande Mataram" was started on the 9th August, 1906. So far as the declarations go the only connection between it and any of the other papers is that it was printed for two months, shortly after it came into existence at the same Press as the "Sandhya". Then when it was formed into a limited company it started a press of its own at its office 2-r, Creek Row.

To show its connection with the "Sandhya" some items in the balance sheet are referred to, two items of Rs. 1000 each and one of Rs. 500 under the head "Loan," and the words "Sandhya" Office in brackets. The explanation given by Sukumar Sen is that these three items represent together a sum of Rs. 2,500 borrowed from Bipin Chandra Pal to pay to the "Sandhya" office on account of printing charges. The paper was for two months printed at "Sandhya" Office and the explanation seems rational. It is however contended by the prosecution that the other items under the head Loan are fictitious amounts by reason of the inclusion of annas and pies. Sukumar says the original loans bore interest and that explains the broken figures. Whether this explanation be true or not it appears to me the prosecution makes too much of these broken figures. Supposing the figures are fictitious it merely shows that the Directors have prepared a false balance-sheet, but from that no presumption can be drawn that the paper was started for the purpose of revolution or that it had any connection with any other paper. On the contrary if it was the intention to hide connection with such a paper as the "Sandhya" it is hardly likely that the Directors would have published the name of the "Sandhya" in their balance-sheet. Then what is the connection by names? Subodh it is suggested financed the paper. That may be true,

but Ex 1096 suggested that some pressure was required to get him to guarantee payment to Dickinson and Co. for the press. Sukumar Sen says that Subodh lent large sums to the company. A large sum is shown in the accounts as loan due to him; it is suggested it was never intended to be repaid. In that case we should hardly find it necessary for Aurobindo to press him to guarantee payment for the press, and if Subodh would not sign merely to keep his name out, it is hardly likely he would let his name appear among the Directors and also in the accounts. The connection, which is more to the nature of a personal connection, is sought to be set up by Ex. 990 between the "Bande Mataram" and Aurobindo as representing it, and the "Yugantar" represented by Abinash. Probably this was written between the 9th and 30th July, though the defence against that was written after the 30th October. Taking the view most unfavourable for the defence that it was written by Abinash to Aurobindo it is no more than an application for help such as one friend might make to another, it is not sufficient to support the inference that Aurobindo was interested in the production of the "Yugantar." Whether he agreed with the "Yugantar's" views or not it is a request with which he might well comply. Aurobindo's policy, as stated by the defence, was in the nature of passive resistance, and so far as articles from the "Bande Mataram," which have been read, go, there is no reason to suppose that that is a wroog description. And in one of the violent articles of the "Yugantar" we find a defence to the fact that a contemporary had advocated passive resistance and the "Yugantar" pooh-poohed the idea. This hardly savours of a connection between the two.

Finally there is the question whether there is anything in the paper itself to support the theory that it tries to a further revolution. Sukumar Sen would not give any clear idea as to who was the Editor. There was evidently a difference of opinion as to whether Bipin Pal or Aurobindo should be the Editor, which resulted in a compromise, the two being appointed Joint Editors. He admitted, however, that Bipin refused to be an Editor on these terms and ceased to work, and the Directors did not want him.

In spite of that fact he would not admit that Aurobindo was Editor either in name or in fact, because the original resolution of Joint Editorship had not been rescinded. A discussion, however, as to whether Aurobindo was really Editor or not is rendered unnecessary by the case set up by his Counsel, which is that though Aurobindo would not be Editor as he would not make himself responsible for everything that might appear in the paper, yet in fact he was consulted on all matters of importance and had to all intents and purposes control of the paper. And he could hardly do anything but admit this in view of the various letters found with Aurobindo. For though all the letters, with one exception, were addressed to Aurobindo by name, he must have passed them on unless in fact he had general control of the paper. Now not a single article in the paper has been pointed out to me, which suggests the use of violence. It is freely admitted for Aurobindo that his ideal is independence, but that the attainment of it is to be reached by passive resistance and by educating the people to stand by themselves: and Counsel for the Crown admits that there is nothing wrong in cherishing such an ideal, provided it is not sought by violent methods. Now no article from the "Bande Mataram," whether Aurobindo's or some one else's, has been pointed out which by the widest stretch of imagination can be said to advocate violence. In only one article "The Results of the Congress," is there any passage which, taken by itself apart from the context, might be said to suggest the use of violence. "He (Mr. Naoroji) once more declared Self-Government, "Swaraj," as in an inspired moment he termed it, to be our one ideal and called upon the young men to achieve it; the work of the older men had been done in preparing a generation which were determined to have this great ideal and nothing less; the work of making the ideal a reality lies with us. We accept Mr. Naoroji's call and carry out his last injunction, will devote our lives and if necessary sacrifice them." And if this sentence is capable of interpretation as the result of passive resistance carried to its extreme limit.

It is also to be noticed that there was only one prosecution for

sedition in the case of the "Bande Mataram" and that was not in respect of an original article, but for reprinting an article, which had formed the subject of a "Yugantar" prosecution. And Mr. Kingsford in disposing of the case pointed out that the tone of that article was very different to the ordinary tone of the "Bande Mataram."

That Upen in his confession says he was at one time Assistant Editor of the "Bande Mataram" and at the same time regularly contributed to the "Yugantar," but does not establish any connection between the two papers.

I am then of opinion that the prosecution has not established the fact that the Navasakti or the "Bande Mataram," as organizations, were links of the conspiracy, and so far as it is sought to connect people connected with those papers with the conspiracy, it must be done by some other means than by showing the mere connection with the papers.

TARA NATH RAI CHOUDHURY.

Before dealing with the remaining accused it will be necessary to say a few words about Tara Nath Rai Chaudhuri. I fully believe the account given by witness No. 168 Jnanendra Nath Sarkar, of the search at his house and the finding of a box brought by Tara Nath, a box containing 3 revolvers and 1,200 to 1,300 cartridges of all kinds. A warrant is out for him and he is absconding. Other things of his found were some letters from Indra Nath Nandi, and some letters addressed to Abinash, Manager of the "Yugantar." The latter would naturally be with him as he was Manager of the Yugantar. There was also a M. S. article "Be prepared to die" and Ex. 1080 an inflammatory pamphlet, setting out the course of the Goddess Kali on all who do not adopt Swadeshi, and give up foreign goods. Ex. 1087 is an envelope first directed to him at 27, Kanai Lal Dhar's Lane, the place of publishing the "Yugantar" in May 1906; the envelope bearing post mark 3rd May. He took over the Managership of the "Yugantar" on the 7th November 1907, and his connection with

this paper and the finding of a quantity of ammunition in his possession raise a very strong presumption of his complicity in the conspiracy.

INDRA NATH NANDI.

Taranath was an old acquaintance of Indra Nath Nandi. A number of letters from Indra Nath were found at the search. The important letters are Exhibits 1073, 1074, 1083, 1084, 1085. These have not been proved to be in Indra Nath's writing by any witness. On the other hand they are not denied: Indra Nath refused to answer any questions, and all that his Counsel says on the subject is that they are not proved to be his. There can be no question that the writing of these five Exhibits is all in the same hand, and it is quite clear that the addresses on the three post cards, 1083, 1083 & 1085 are by the same hand as the proved signatures and addresses on Ex. 78—1a & 78—1b. The address on the envelope of Ex. 1071 is also clearly in the same hand. All except one are written from the Chattra Bhandar with which he was admittedly connected. Indra Nath, who is the son of Colonel Nandi, a retired Officer of the Indian Medical Service, was arrested at the house of his father on the 23rd June. It was found that the whole of his left hand and the terminal phalangs of the thumb and index finger of the right hand were missing. Colonel Jordon, the Police Surgeon, who examined him also found a number of bluish black spots on the upper part of the chest, a large number on the right forearm, some above the elbow on the inner aspect; a few on the neck and cheek; patches apparently consisting of such spots used together on the inside of the left thigh and downward to the middle of the skin and a few similar spots on the right leg just above and below the knee. Colonel Jordon says he has no doubt that these were the result on parts of the body which would be protected by a *dhoti*, and none were found of a gun powder explosion. No marks were found on the back. In fact all the marks, it will be seen, found just were one would expect them to be if the man was squatting and meddling with gunpowder and there was a sudden explosion. What remained

of the right hand also showed a recently healing or healed surface, and then also there were bluish black discolourations.

Two nurses from the Medical College Hospital speak to having heard a loud explosion from the direction of No. 37, College Street, accused's house, sometime in the first week in May. One was in the Medical Department of the out-door dispensary, almost opposite No. 37, and to the south-west of it: the other was in a ward to the north-west of No. 37. Their evidence shows that the explosion was followed by a commotion in No. 37 and the door communicating with the street was shut. Attempts were first made to show that the nurses could not have seen, what they said saw from their respective positions; that theory was abandoned after a local inspection of No. 37.

An argument which appears to have found favour with the assessor who gives reasons for his opinion is that there was no evidence to corroborate the nurses. A Sub-Inspector had made an enquiry in the neighbourhood before on account of a report being received of an explosion having taken place, and had not succeeded in getting evidence. And considering Colonel Nandi's position I am not surprised that the neighbours were reticent. But here we have two witnesses, who can have no possible reason for stating a fact which is not true and it is utterly idle to suggest that their evidence should be rejected because the patients in the wards or a durwan were not called to corroborate them. I have not the slightest doubt that their evidence is true.

Colonel Jordon was cross-examined to show that he was wrong in ascribing the marks to a gunpowder explosion. He was questioned about the marks on a person's skin produced by "purpura chomatica" and "pinta," and when I asked Mr. Mitter if accused had ever had either of these, Mr. Mitter said he had not, but his object was to show that Colonel Jordon might be wrong in putting the marks down to an explosion. In fact Colonel Jordon, when passages from books relating to the marks left by those diseases were put to him, said that the descriptions were utterly different from what he saw. And I fail to see what is the object even it had been successful, to show that similar marks were produced

by certain diseases, when admittedly accused has had none of those diseases, one of which by the way is not known outside South America. Colonel Jordon says he has no doubt the marks are the result of a gunpowder explosion and there is no reason to suppose that if there was any doubt, he would not say so. Mr. Mitter carefully refrained from cross-examining him on the point whether the particles were carbon particles. And at the time that Colonel Jordon examined Indra Nath he was certainly aware that the injury to the hands was alleged to be due to the fall of a safe and he may also have been told that an explosion was suggested. He says that Indra Nath at the time said he did not know what the marks were and he thinks he also said that he had not seen them. If they had been in existence long before as is suggested, it is only natural that Indra Nath should have said so then. It is suggested that such marks are common in Indians. It is curious that Colonel Jordon was not asked whether he had never seen such marks on the body of an Indian, when he must have examined thousands. The absence of any such marks except where they would be in the case of an explosion, strongly supports Colonel Jordon's evidence: and I absolutely disbelieve the evidence of witnesses No. 94 and 159 as to having seen marks on Indra Nath before, if their evidence is intended to refer to these particular marks. If not, it is useless.

Indra Nath's injuries had been carefully dressed, presumably by his father. Whoever attended to his injuries could have stated conclusively whether they were such as would be caused by the fall of a safe or by an explosion and he could also have given an opinion on the cause of the marks. That witness has not been called. Colonel Jordon says that so far as he could see the injuries to the hands were consistent with the theory of the fall of a safe, but the first Medical man who saw them could have said with certainty whether they could have been caused by an explosion and whether the injuries had any connection with the marks. That gunpowder was not found in the house proves nothing. It would doubtless have been removed. Charcoal was found, which might be there for the manufacture of gunpowder or for

a perfectly innocent purpose. It was possible to give an innocent explanation, for his father as a member of the I. M. S. is entitled to keep arms and ammunition; but that explanation has not been given. We can only conjecture what Indra Nath was doing. We do not know why the gunpowder exploded, but Ex. LVII found in the book Ex. LVI suggests that one compound used or experimented within the garden was picric acid and gunpowder.

There is some reason for the theory that Indra Nath helped in supplying weapons to the garden. His position as son of his father would make that comparatively easy. Ex. 231-1, an entry in the book Ex., 231-2, apparently refers to pistols and it shows that two were made over to Indra on the 7th April and 3 on the 10th perhaps for repair, or perhaps for some other purpose. The entry of course does not give the full name, it can only be a matter of inference whether it was the accused or not. But we find two books in the garden, Ex. 1427 with the name 'Indra Nath Nandi, College Square,' the Chattra Bhandar had been removed to No. 41, College Square and Ex. 1425 a book with the name "Dr. S. C. Nandi, I. M. S."—Also in Ex. 1251, a book found at No. 15 the name of Indra Nath appears 3 times once almost erased. In two of these there is a very close similarity to his admitted signature, one has not much resemblance. It is suggested by the defence that the book may have been stolen that the name may have been rubbed out by some one and accused himself writing it again.

Ex. 1074 a letter by him to Taranath, seems to refer to ammunition. Mr. Mitter says he does not know to what it refers, but accused is the only person who can say. It is singular that a person who is in a position to be able to get cartridges is writing to a person who is found in possession of 1200 to 1300 cartridges, in language which applies better to cartridges than to anything else. And the writer gives the number of his house as 37. As I have said before I have no doubt the writing is his and there is internal evidence which points to the same conclusion. In the same letter there is a reference to one Harish and Harish Ghose

the *Yugantar* was printed, and apparently with the *Yugantar* itself, he suffers from a gunpowder explosion which occurred at about the time, when the medical evidence shows he may have lost his hand. He is writing to Taranath apparently about cartridges, about the Chattra Bhandar and the *Yugantar*. The name Indra is found in the garden in an entry which can only refer to pistols. Two books are found in the garden, one bearing his name and one his father's. The latter is an old book giving hints to sportsmen and travellers, and includes hints on shooting and loading and his name is found on a book in No. 15, the name being apparently written by him. The name Indra Babu is also found in Ex. 201a against an item of Rs. 10 for the 4th March. He was also bound down to keep the peace in Mymensing along with Sishir in the circumstances to which I have referred in dealing with Sishir's case. There can be no doubt that he also was a member of the conspiracy.

ABINASH CHANDRA BHATTACHARJI.

I next take the case of Abinash Chandra Bhattacharji. He refused to answer any question, and the written statement put in by him contains nothing more than an assertion of innocence. Certain facts, however, are admitted for him by his pleader, *viz*, that he took No. 4, Harrison Road and sold books there, that he lived at No. 23 while Aurobindo was there, that he arranged to take over the "Navasakti" and moved to No. 48, Grey Street. Aurobindo in his statement says that he engaged the services of Abinash to look after his household affairs when he set up a house in Calcutta. This fact is not in terms admitted on behalf of Abinash, but it is by implication and so it may be taken that that is his case also. It is further admitted that he was at one time Manager of the "Yugantar," but the period is stated to be from about March till September, 1907. It is stated that he gave up his connection with the "Yugantar" and sold his press to Nikhileswar on the 2nd September. The publication by him of the "Modern Art of War" and the "Mukti Kon Pathe" is admitted, and it is admitted that the latter is seditious, but it is

argued that he did not realize that it was seditious when he published it and that he *merely* did so to make some money. He was arrested on the 2nd May at 48, Grey Street in the "Navasakti" Office.

In his confession Barin speaks of him as starting the "Yugantar" paper with himself and Bhupendra Nath Dutt. In regard to this it is argued that there is no evidence that he had anything to do with it and if he had, the object was merely to give spiritual training. I have already pointed out the kind of preaching indulged in by that paper from its earliest numbers. That he was early acquainted with Barin, there can be no doubt. Exs. CXXX-1 and 2 shew that in June 1906 rent for the holding which is the garden was paid through Abinash for Barin.

Ex. 311-1 is a note-book with various entries chiefly accounts, admitted to be Abinash's. It is used by the prosecution mainly to show Abinash's transactions on behalf of Aurobindo but contains other entries, which affect the case of Abinash. On page 111 there is an entry Manmatha Nath Banarji, 29-2, Harrison Road, which name and address are both found in the garden. On page IV there is an entry of a sale of the paper through Nirmal and Sailen. The entries about Bibhuti on the same page possibly refer to the Printer, not the accused. In page X there is an entry about Sudhir: whether this is the accused or not it would naturally be there being in connection with Aurobindo's wife. On page XIV there is a reference to Indra Nath. There is also an entry of Rs. 200 against Basanta Fund, which probably refers to a cheque which Aurobindo asked Sukumar to draw for the benefit of the family of Basanta, the convicted printer of the "Yugantar." On page XV there are references to a Nalini Babu and a Shushil.

In Ex. 314 are found the names of Debabrata, Harish and Taranath. These names naturally would be in the book, being on account of the "Navasakti." Harish's name seem to connect the "Navasakti" with the "Yugantar," but there is evidence that one Harish supplied electric fitting for the "Navasakti press."

This account book would naturally be with Abinash when he took over the paper.

Exs. 805, 806, 808-1-2, 810 and 841 refer to the payment of rent for the upper floor and a room and *dalan* on the ground floor of No. 41, Champatala 1st Lane. The name of Abinash was first entered in the receipts and counterfoils, it has been changed in the receipts to Harish, but not in the counterfoils. Sadhana Press has also been written on the receipts. This has not been explained satisfactorily. The witnesses on the point are Nos. 69, 70 and 71. If these rooms were taken for the paper, Harish's connection is not explained for he was not then the Printer or Publisher. If they were taken for the Sadhana Press it shows that Abinash was connected with it long before he declared himself as the owner ; for not only the first payment was made through him, but subsequent payments also. For though witness No. 70 says he was not present when the payments were made, he must know through whom they were made.

Ex. 1082 is a postcard from one Charu Chandra Chaki to Abinash by name. It enquires for Profulla Chaki, his brother, and asks for a copy of the Ranamti. Charu Chaki was called but said he thought the card was not his. He admits, however, that the writing is like his, the card bears the post mark of his own village and he identifies the photo of Profulla as that of his brother. He probably denies the letter for fear of the application for a copy of the Ranamti. There can be no doubt that he wrote it. Here then we have a brother of Profulla expecting to get information of his whereabouts from Abinash. Though addressed to Abinash personally it may have come into the hands of Taranath though he is left at the "Yugantar" office.

I have already referred to Ex. 1071 : it mentions Abinash being at 27 and working at the paper and press in June 1906. It is suggested that this may have been some other Abinash ; but Purna Lahuri says when he went to 27, Kanai Lal Dhar's Lane he saw accused Abinash there, though Bhupendra says he was everything in the paper. Here we have corroboration of Barin's statement and contradictions of Abinash's everything in

Abinash Similarly 305-6 is a postcard to the occupier of 4, Harrison Road found with Abinash. The natural suggestion is that these belie the fact that Abinash gave up connection with the "Yugantar" in November 1907, but it is argued that "Yugantar" bookshop was a mere name having no connection with the paper.

Ex. 767 was a letter to Abinash, dated 24th Falgun, found at Sil's Lodge. The year is not mentioned but the date is probably 3rd March, 1907. It is hardly likely to have remained from a previous year. We don't know who the writer is, or the person referred to in the letter. It is possible that Abinash is not the accused.

From the above documents we have evidence connecting Abinash with Taranath, Indranath, Barin, Bahba Bhusan and Bhupendra Nath Dutt, with the "Yugantar" in 1906 and probably also with the Sadhana Press before he purports to have acquired it.

His brother who was called as a witness attempted to prove that he had sold his press to Nikhileswar and consequently had no further connection with the "Yugantar." But the brother's account of his movements is incorrect. He says that he stayed at home for 3 months after his marriage. His marriage was on the 30th November and he certainly does not appear to have stayed at home for 3 months after that.

With reference to the "Mukti Kon Pathe" it is argued that it was published in January, 1907 and that was before any prosecution had taken place and Abinash did not think it harmful. But that argument fails when it is remembered that he brought out the second edition immediately after his escape in the "Yugantar" prosecution.

In this connection I may notice an argument that was used more than once, that people who sold seditious literature and got a commission for doing so, could not be conspirators or they would get no commission. But they had to live somehow.

Shadowing witnesses depose to having seen him at the garden, Nos. 38-4, 23, 15, 48, and 4. Only Sarat Dass speaks of his presence at Nos. 38-4 and 15. His evidence may be discarded. Nos. 23, 48.

tion. Naren was apparently asked whom he saw at No. 23. There could be no doubt about his seeing Abinash there, it was where he lived, and it is quite likely that Naren thought he was being asked for a list of persons apart from any incident. Chandi in the Magistrate's Court first pointed out Nalini as Abinash, the mistake is explicable. All the witnesses seem to have had some difficulty in finding Abinash. His personal appearance had entirely altered, he having grown a beard.

Bama Charan Sen tries to prove an alibi for Abinash on the 18th, but fails.

Now whatever be the correct explanation of this incident of the 18th and it illustrates what an advantage it would have been if a note of every report have been kept, there can be no doubt that Abinash was seen at the garden. Apart from the special incident there is the general evidence as to his being there. I have pointed out that Chandi, Suresh and Satish have made mistakes of identification but when others as well have identified the man there is least chance of mistake, especially as in this instance he was a man often seen and Suresh and Naren both knew him by name as well by sight in the early stage of the watching.

Then there is an incident of the 12th April when he was seen coming from Sealdah Station with Barin by Bolai. Here again an attempt is made to prove an alibi by one witness who says he was with him in a sankirtan party that went to Nawabganj and by another witness who says he saw him with the party when it passed along Harrison Road late that night. Even if both these witnesses are telling the truth it is possible that Bolai's story is also true though unlikely. The first witness does not take Abinash later than 4, the other picks him up at all. Bolai saw him after 5. I am not disposed to believe either of these witnesses, the attempt at alibi is obviously intended indirectly, for Aurohindo's benefit; the second witness Girija tries to prove an alibi for him also.

In connection with Abinash's alibi Girija was asked to look at a copy of the "Bengalee." He read the account of the party's return in that very copy. Then Mr. Dass asked him to refresh his

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memory and fix the date from the paper. He looked at the paper and said it was the Sunday previous to the 17th, the 17th being the date of the copy. He however said later that he could fix the date wholly apart from the paper and had no necessity whatever to look at the paper. I look upon all this incident about the paper as an improper attempt on the part of Mr. Dass to get on the record the contents of a document, which he referred to put in and to prejudice the assessors by the spurious authority of a newspaper article. We have then Abinash was connected with the garden also and taken with what I have said before there can be no doubt that he was a member of the conspiracy, and to my mind a dangerous one because of his previous history. He was at one time an apprentice in the Judge's Court of this District, later a school-master and evidently possessed of some literary ability.

SAILENDRA NATH BOSE.

Against Sailendra Nath Bose the case is simple. I need not refer to the documents showing his connection with Nos. 23 and 48 nor to the evidence, for it is admitted by his counsel that he was intimately connected with Aurobindo and Abinash and therefore was frequently at those places.

Aurobindo by the way denies knowing Sailendra, but says that he saw him sometimes come to see Abinash. The admission by Sailendra's Counsel cannot of course bind Aurobindo in any way. And it is natural that Sailendra should frequently associate with Abinash being a co-villager of his. He was arrested at the Navasakti office. He was connected with the Yugantar for he was found at the office at the search on 1st July, 1907, and then described himself as the Sub-manager. This fact is corroborated by the search list made at the time, in which he is so described. He was identified by the postmaster, witness No. 44, as a man who came occasionally from Sil's Lodge for letters. He is identified as seen at the garden by Satish, Suresh, Palit, as well as by Satat Dass, and seen at No. 15 by Suresh, who gives a specific date 23rd April as one occasion when he saw him there. Sibakali also

mentions seeing him there. The evidence of the shadowing police officer apart from the spies is sufficient to connect him with these places. He was known from a very early stage of the shadowing proceeding and there is no reason to suppose a mistaken identification in his case. In Ex. LXXVIII found in the Ex. LXXVI there are initials S. B. They may stand for him. The evidence against him is very clear and clearly shows him to have been a member of the conspiracy.

DINDOYAL.

The case of Dindoyal is not so easy. That he should be seen at No. 4 is not surprising considering that he is Sailen's brother and a co-villager of Abinash. His being on friendly terms with Abinash might explain the finding of Ex. 831 in his house. The important evidence against him is his being seen on the occasion when Barin and Abinash came from the garden to No. 4 and then went on with others to No. 23, and the fact that he was seen at the garden and No. 15.

I have already referred to the uncertainty of the evidence about the incident of the 8th. At the garden he was identified by Satish and Suresh and at No. 15 by Suresh, at each place also by Sibakali. The chance of Satish and Suresh, having made a mistake is lessened by the fact that they knew him early in the shadowing proceedings. Satish, however, made no mention to the Magistrate of seeing him at No. 23, now he says he saw him there 3 or 4 times. The difficulty in his case arises from the fact that he was a Cashier in the Tramway Depot and not of an aimless character as most of these accused seem to be except when connected with a press or paper. It is true he was at the search of the Keshab Printing Works, but that was in the capacity of a witness the Tramway Depot being near to No. 7. The name Dindoyal appears in Ex. 932 the students' mess account at No. 41 Champatola 1st Lane, but assuming the entries to refer to him he might be living there without being connected with the Yugantar, especially as Sailen lived there. Satish and Suresh have made mistakes and

it is possible that having seen him at other places on several occasions they have made the mistake of putting him at the garden and No. 15. I have no particular reason for thinking they have in this case, but there remains the fact that he was a man with a regular employment and bearing as he does a resemblance to his brother, I cannot help feeling that in his case there is some doubt.

NIKHILESWAR RAY MAULIK.

I next take the case of Nikhileswar Ray Maulik. He was arrested on the 23rd June at his house in 68, Maniktola Street. The prosecution seeks to connect him with the conspiracy by connecting him with the Yugantar and Chattra Bhandar. He was the managing director of the original Chattra Bhandar before it was turned into a limited company. When it was made into a company he was appointed as one of the auditors. The strongest piece of evidence against him is the fact that he was a member of the actual or proposed printing partnership the nature of which is stated in Ex. 1568. With regard to that his case is that it was a scheme that was in fact never carried out, that he was approached because being a business-man he was a travelling inspector for Messrs. Jardine Skinner and Company, his name would be guaranteed that the company would be worked on business lines and that when he subsequently bought the press these counterfoil receipts went with him. It is argued that it is merely a coincidence that some of the same names appear among the directors of the Chattra Bhandar and the explanation is offered that that is due to that fact that only a limited number of persons were prominent in swadeshi agitation. It is alleged that he had a machine press of his own before that, the Sadhana was a hand press and that when he bought the latter he added it to his own press the Sumati and gave both the name of Sumati.

I have already referred to the language used in Ex. 1252 the preface and prospectus of the Chattra Bhandar, Limited. So far as it goes the evidence of Pabitra who conceals as much as he can of his knowledge of the Chattra Bhandar is in his favour :

for he does not name him among the promoters of the new company, and as he is not to be one of the directors, but merely an auditor he can hardly be held responsible for the language of the prospectus.

Ex. 1223, which is undoubtedly signed by him, is a post-card asking Messrs. Ganguli Bros., of Chandpur, to try to get subscribers for the Yugantar and saying he is sending 5 copies for circulation. This is dated 28th March, 1906, *i. e.*, immediately after the paper was started. It is signed by Nikhil for Bhupendra Nath Dutt. The explanation given is that, as Nikhil knew the Gangulis, Bhupendra was trying to work on them through Nikhil's signature. But the language of the communication hardly suggests that. Nikhil was merely doing Bhupendra a favour. If such were the case Nikhil would probably have written a separate letter with a word in praise of the paper.

Ex. 1247 is a counterfoil receipt in the Yugantar receipt for Rs. 500 received as a donation from Subodh Chandra Mulick. Witness No. 144 says the body of the writing but not the initials N. R. M. are in Nikhil's writing. He has gone back on his statement made to the Magistrate. The initials no doubt are his. Here we have further evidence that he was connected with the 'Yugantar' in its early days. In what capacity we do not know, but in view of Barin's connection with it, his subsequent association with Barin in the printing partnership for a press which printed the Yugantar during the whole of its existence is suspicious.

Ex. 1092-1-6 are counterfoil books: care of the Sumati Press and one of the Yugantar. In one of these the heading is struck out and Yugantar written but all contain subscriptions and receipts for the Yugantar. It is suggested that these were originally printed for the press, but as there was a great run at that time, November and December 1907, on the Yugantar, Nikhil lent the book to the paper and the correction was not made in every case. That is a plausible explanation, but the difficulty is that the body of the counterfoils is in many cases written by Nikhil, which suggests he was not merely owner of a printing press, but had some other connection with the Yugantar.

On the other hand it is pointed out that Nikhil was not present at any of the earlier Yugantar searches, and it is argued that when he pointed the Yugantar the office and his press were not at the same place. For instance Exs. 1293 and 1592 show that the Yugantar office was at 28-1, Mirzapur Street as stated in the declaration. But the declaration of printing also gives No 26-1 as the place of printing, but we find no press there. Again Exs. 1296, 1291, 1290, 1292 show the Yugantar office was at 75, Cornwallis Street from December 1907 to May 1908, but that was first declared to be the place of publishing on 4th March, 1906. The letters are hardly likely to be a blind as the two earlier letters deal with the receipt of money. But they seem to show that the declaration of publishing at 5, Ram Dhan Mitter's Lane of 28th January was false. For that Nikhil is not responsible unless in the conspiracy. As they stand these letters are in his favour as showing that the office was not at the same place as his press.

That proof-sheets of articles for the Yugantar were found at his press carries the case against him no further than the fact that he printed the Yugantar. They were found where they naturally would be.

At the search of the press on 24th December, 1907 at 5, Ram Dhan Mitter's Lane was found an account book with an entry Ex. 994, "the account of the Chattrra Bhandar" showing sale of certain books among them the "Modern Art of War." Ex. 995 is a slip found in the book showing the account of Nikhil. It shows the same books and a deduction of commission, and the ultimate result is same as in the Chattrra Bhandar account, but in one result is same as in the charge per the copy of the Modern Art of War is—12—and in the other—8—what the two items mean no one has been able to explain; the defence suggests that it means that Nikhil bought from the Chattrra Bhandar charging commission and then sold the books in the mufassil again charging commission. But in that case I don't understand why the slip should be headed "account Nikhileswar Ray Mauphik," when found at his press, unless the latter

other occupants of the house and that the letters passed between Jiban and one Mati they are not really evidence at all against him. In any case the terms used appear to apply to *ganja* smoking for to the D. S. P. who made the search, a Bengali gentleman states that unless they refer to *ganja* smoking they convey no meaning to him.

On the whole I am not convinced that he was a member of the conspiracy. And before leaving his case I must thank Babu Bijoy Krishna Bose for taking up his defence and arguing his case at a very short notice, in the absence of his pleader through illness.

DEBABRATA BOSE.

The case against Debabrata Bose consists of the finding of seditious literature, copies of the Modern Art of War, Mukti Kon Pathe, Deshacharjya and Bhowani Mandir in his house, the fact that he was editor of the Navasakti and that he was connected with some of the members of the conspiracy.

I have already pointed out that the theory that the Navasakti was connected with the Sandhya was based on a misconception as to the meaning of a letter and that the remark of Manaranjan that he was surprised to get a copy of the paper was not connected with the sentence about the death of Brahma Bandhab. I have also pointed out that the articles of the Navasakti have not been shown to be revolutionary. The worst appears to one headed "Reconciliation impossible."

He appears to have been fairly intimate with Taranath. Ex. 1072 is a letter written by him to Taranath in June 1904. He says he will not engage in any work that will not bring good to the country and refers to the suggestion that he should take up the collection of subscriptions for the new movement. The defence suggests that this refers to the industrial movement. The Swadeshi movement was in existence long before it became a channel for the spreading of revolutionary ideas and as Debabrata was fairly intimate with Taranath then before there is any reason to suppose the conspiracy had started it is not unnatural that the intimacy should have survived. Both may have been possessed of patriotic ideas, but because in Taranath they took the form of violence, it

does not follow that they did so in the case of Debabrata. The letter shows that Debabrata wanted to do something to earn his own living and that same idea may explain his presence on the printing partnership (Ex. 1868) in which he was to hold the position of auditor.

His acquaintance with Barin is shown in letter Ex. 1077 which is dated 9th April 1904, and in Ex. 1085 from Indra Nath to Tara-nath one D. B is mentioned in conjunction with Abinash, Barin and Bhupen.

It is sought to show that Debabrata was still connected with the Navasakti after Abinash took it over, by the bundle of postcards Ex. 1185 being found in his house. This is explained. When the paper was sold to Abinash Bama Charan told the postmaster to send all letters to Debabrata. Then when the arrests took place there were orders to detain all letters for No. 48. This order was withdrawn at the beginning of June, so it is suggested all these postcards were taken in a bundle to No. 48 and there being only a durwan living, the durwan took them to Debabrata's house. The postcards are all of the 3rd, 5th and 6th June and found as they were in a bundle, thrown out of a window, this is a reasonable explanation.

By Ex. 1198 it is sought to connect Debabrata with Hrishi Kesh. This is a book "Lecture on Jnan Yoga" presented to Hrishi Kesh at Mayabati. It is suggested that this may have come to the house through Sudhira, Debabrata's sister, who was connected with the asram. Other books of her were found in the house, and the explanation is a possible one.

Then there is a book, Ex. 942-6, a book of cuttings about the partition with a partition vow and below a red seal. Mr. Norton characterises this as a seal made in initiation of blood; it is just as likely to be meant for an initiation of sealing wax.

A letter was found in the house. Ex. 1214, saying it was expected there would be a search of the house soon. In view of that intimation it is in Ocababrata's favour that he did not abscond.

Ex. 1190 is a copy of the Matri Puja and on it is written

that salvation, which it can only attain by methods indigenous to the country. His doctrines are not those of passive resistance, but of the realization of salvation by suffering. If the law is unjust, don't obey it, and take the consequences. Do not be violent, but if the law is unjust you are not bound morally to obey it; refuse to obey it and suffer. He had been saying to the people you are not cowards, believe in yourselves and attain salvation, not by assistance from outside, but through yourselves. And this Mr. Dass says is the key of his case.

A written statement was put in by the accused to which it is unnecessary here to refer at length, but I shall refer to two points because Counsel for the Crown took up a great deal of time in arguing his case as if the accused had made two statements which in fact he nowhere did make. The first assumption which he made was that Aurobindo says that he had nothing to do with politics, the second is that he says that he did not know Abinash before he engaged his services in setting up a house. With regard to the first assumption I need only point out that Aurobindo says while in Baroda he took no part in the politics of Bengal, with regard to the second I need only refer to para 9 of the written statements, which gives no justification at all for the assumption.

In dealing with the case of this accused, I propose to take the evidence in seven groups; (1) letters that passed between Aurobindo and his wife (2) letters between Aurobindo and other persons (3) Aurobindo's speeches (4) his writings (5) letters between other persons (6) entries in documents, (7) facts, whether depending on oral evidence or deducible from documents. Finally I shall deal with certain important documents which require consideration by themselves.

In the first group there are 3 letters of 1902 more of which is important. There are no more letters till 1905, then we have 3. The earliest in date is Ex 286, 1 & 2, a long letter from Aurobindo to his wife relied on by the prosecution on account of a few phrases in it and by the defence as a whole, as setting out the principles which govern his life.

He points out that his views and mental attitude are different

from those of the people of this country and goes on to say that an extraordinary man is generally looked upon as either great or mad : and then says that he had got three ideas, which he characterises as mad, in what is doubtless a play on the word used in the earlier part of the letter. The first idea is that gifts given, by God should be used in the service of God, and he refers more particularly to their use in works of charity. The second idea is that he is realizing the teachings of Hindu religion and feeling God within himself. The third idea is that the one in which occur the passages on which the prosecution lays stress : "I know I have the strength to deliver this fallen nation. I may not have bodily strength but I am not going to fight with sword or gun but with the power of knowledge." In the last paragraph but one of the letter he speaks of deliverance of the country. And in the last paragraph he speaks of all this as a secret.

Mr. Dass argues that the 3rd idea is drawn from Vedantism. The idea is that the whole world is divinity : if you cannot see that, it is maya, or illusion. The country should not be regarded as so many rivers, fields, etc., but as a manifestation of the divinity. And if that be the true view of the passage it is only natural that he should speak of removing which stands in the way of that ideal.

Taking the letter as a whole it is a discussion with his wife, asking her whether she is going to follow the Hindu religion, which is his religion, or some other. He points out that she has been brought up in Brahma school; but is a Hindu none the less. Will she be a help to him in his religion, or will she follow foreign ideas? And as regards keeping the matter a secret, we find a reference to the same idea in the moral precepts in Biren Sen's book, do not disclose the principles of your religious faith.

If we start with the knowledge that the writer of this letter is a conspirator we can find passages in it that are suspicious, viewing it in an unprejudiced way there is nothing in it that really calls for explanation.

The next letter in date is Ex 286-3. In this occurs the passage "I have to keep some money to send to Madhav Rao who has been sent to England for some special work. I have had to spend lot of money on account of the Swadeshi movement : and I wish to carry on another movement which requires unlimited money." The prosecution suggests that this refers to revolution, the explanation offered is that Madhav Rao was a pupil of his and he used to help his pupils when they went to England ; and that the movement which he contemplated was the one specified in para 2 of his written statement, a large religious movement based on the Vedanta.

The next letter is dated 22nd October, 1905 and Ex 286-4. He refers to Barin's ill health and his energy in going out in the service of his country. He says, "don't tell Sarojini (his sister), she will be mad with anxiety." We know in fact what was the nature of the work which Barin was engaged on at this time, from his own confession. The question is how far Aurobindo was aware of his aims. The reference to Sarojini being anxious may merely mean on account of Barin's health. There is again in this letter an indication of Aurobindo's religious tendencies "the time for evening prayers is coming."

In 1906 there is no letter of much importance. Ex. 286-6 contains a reference to his religious devotions morning and evening and to 12, Wellington Square where he was evident always welcome. Another indication of his religious ideas is shown in his having given up meat and fish.

In 1907 there is Ex. 1121-1 from wife to Aurobindo on 1st December. The prosecution look on it as important from the reference to your paper. In view of what I have already said about his connection with the *Bandu Mafaram* nothing more need be said. There is also a reference to setting up the rents of the house which apparently refers to 19-3, Choku Khansama's Lane.

Ex. 294 is a letter of 6th December from Aurobindo explaining why he was not able to send some brandy. He says "Abinash is not here, nor is Sodhir and Barin was not here". He also refers to the time as being one of anxiety.

This letter is relied on as showing connection with Sudhir and knowledge of Barin's trip to Naraingarh. But there is nothing to show which Sudhir this was,—there are more than one,—and because he saw Barin on the 6th it does not follow that he knew what he had been doing.

The anxiety is explained as a worry in connection with the congress. And again there is a reference that he cannot, like ordinary Bengalis, consider happiness of his family the principle aim of his life.

Ex. 288, dated 20-12-07, is a letter from his wife, in which she shows *resentment* because he will not provide her with a house to live in and there is a reference to the house, apparently 19-3, Choku Khansama's Lane.

Ex 1123 1, dated 3-12, is a letter from his wife saying that if Abinash is married he won't do "your work." If Aurobindo is a conspirator this may have a similar meaning if his wife knew that he was engaged in a conspiracy it may bear the innocent meaning that he would have to look out for some one else to look after his house.

Ex. 292-4 dated 17th February 1907, obviously a mistake for 1908—is relied on as showing that he felt that a crisis was on him. If that be a correct view it suggests that he was not at any rate previously a party to the conspiracy and if that be the case all the previous letters must bear an innocent meaning. The last words "I have not written or said anything about this to anybody except your mention is forbidden," may refer to the secrecy enjoined as to his religious principles. The letter reads like that of a man filled with religious zeal and, unless he is deliberately trying to deceive his wife, shows the connection in his mind between religion and the doctrine of self-education that he was preaching in Bombay.

The result of the letters taken together is to show that he was a man of strong religious convictions and that he wanted his wife to share those convictions, there are some passages which may be conspicuous but which are also capable of an innocent explanation.

written statement. Aurobindo speaks of Barin as wilful and erratic, the family failing.

In Aurobindo's speeches there is not much of importance. Evidence was given of his itinerary during January and February 1908 in the Bombay Presidency and reports of speeches made there. The whole of this evidence might very well have been omitted as it proved nothing beyond the fact that he was received with acclamation wherever he went, a fact which the defence have never attempted to deny. So far as these speeches went they help the defence more than the prosecution. From them we get an idea of the stress that he laid on national education on lines other than those laid down in Government schools, and this is in accordance with what is claimed as the ruling thought in his policy that India is to find her salvation from within and not from without. The only passage that can be construed as at all inflammatory is the concluding sentence of one of his speeches "live for your swadeshi or die for your swadeshi" which may well be excused as a mere piece of hyperbole.

More violent remarks are those which he is said to have used at a meeting on the 3rd April 1908 when he proposed a resolution of sympathy for the Tinnevely riots. The meeting was as usual attended by volunteers carrying lathis. From the short note made by the police officer who reported the proceedings he appears to have spoken in support of swadeshi and used the expression "now is the time when the brain is to be prepared for describing plans, the body for working hard and the hand for fighting the country's cause." The explanation given for this is that what he meant was it was too late merely to write and speak, the people must now be ready to put their whole heart into the case. It is pointed out with truth that Aurobindo constantly used metaphors and figures of speech.

The speech as reported is brought into very small compass in fact except for this phrase the first of his speech is given in four short sentences. It would not be right to lay too much stress on an isolated phrase in a speech very scantily reported and while it must not be forgotten that the effect upon hearers might not be that

where we are comparatively weak, from a ground where we are strong." Again he says "aggression is unjust only when unprovoked, violence unrighteous when used wantonly or for unrighteous ends."

The argument of the whole article shortly is this,—to drive out that which is evil violence is justifiable. We don't hate the English but we object to their exploiting the country, for the interests of the two nations must be different and we can stop that exploitation by boycott. It is not morally wrong for the ends at which it aims are the interests of the people. And that being so we should be morally justified in using force, if we were strong enough to do so."

As a mere piece of philosophic writing there is no special harm in this. The danger is the state of feeling in the country at the time and the suggestion that violence (4) is justifiable if the nation wishes for a particular thing : the fact that in the circumstances the nation (4) should not use violence is relegated to the back ground equally to the question who is to decide what are the best interests of the nation. It is left for the reader to come to the conclusion that those who can make their voices heard most are to decide what are the interests of the nation and impose on the inarticulate masses a tyranny far worse than that which they themselves condemn.

Ex. 289-9 is a still more extraordinary article. I shall not quote (4) from it as the omission of any sentences would affect the whole. The gist of it is that the object of the nationalist is to build up the nation. The nationalist has a deep respect for the law, because without it the nation cannot attain proper development. But the law must be in accordance with the wish of the nation. If it is not, it is utilitarian and not moral. And if immoral it should be broken. The nationalist is not afraid of anarchy and suffering. He welcomes them if the result is the building up of the nation.

Mr. Dass argues that the real point of the (4) passage dealing with anarchy and suffering lies in the three questions which the nationalist put to himself with regard to a method, (1) whether is it effective, (2) is it consistent with the traditions of the people, (3) is it educative of national strength ; and he admits that

Aurobindo's views are that if violence answers those tests it is a method to be adopted that when strong enough to fight the nationalist will fight, but at present he must merely disobey the law if he thinks it wrong and suffer. He puts this supposition: suppose the people refused to pay taxes their lands would be seized and put up to the sale. No one would try when shooting by the English would begin to compel them to pay taxes and that would be the suffering contemplated. One cannot but regret that Mr. Dass should attribute such a character to the British race; he forgets the intermediate stage and that shooting would not begin till rioting would be the inevitable result of fields lying fallow and the means of sustenance gone; and who would be responsible for the intermediate stage?

Mr. Dass also argues that the idea is the same that has been elaborated by the European philosophers, that Government cannot exist against the will of the people, and that fact has been the explanation of all revolutions in Europe. The difference is that in Europe rulers and the ruled have been of the same race, here they are not.

As an essay this article is a splendid piece of writing. The danger lies in the effect that it might have on ill-balanced and impressionable minds. And it is argued that is perhaps the reason why it was not published. The fact that neither of the articles published is again a point in Aurobindo's favour. For though philosophic reflections may show the trend of a man's mind it very much affects the question of whether he is a conspirator or not, if he does not publish writings which doing no harm to a careful reader might be misinterpreted by those of less mature understanding.

Mr. Norton lays great stress on the passage where he refers to the other papers including the *Jugantar* and *Sandhya*, wrongly, I think, as the next sentence shows. The writer says the methods advocated are different, though all have the same ideal, and it is conceded that there is no harm in independence as an ideal, the offence lies in the methods by which it is sought to be attained.

Ex. 292 8 is a violent piece of writing, written apparently on the partition day. It is, however, not Aurobindo's but is in a

woman's hand, by the same hand apparently as that which wrote the two accounts Ex. 287-1 and 292-9. Aurobindo's name is on both these accounts, they appear to be for the supply of bazar articles to his mother at Robini. It would be rather far fetched to say that the contents of every piece of papers left by Aurobindo reflected his own ideas. If this paper was written by his sister, it must be remembered that she was living with him.

The next class of evidence is letters passing between other persons. Ex. 182 is a letter from Ram Chandra Probhu to Upen. The point about this is that it is addressed to 23, Scott's Lane. In fact there is nothing to show that Upen ever lived at No. 23 and the question is why should Ram Chandra address a letter to him there. The letter is in answer to one from Upen and is with reference to the visit of Sisbir and Hemendra to Bombay. From the letter one can gather that Upen had written about them to Ram Chandra and presumably the answer is addressed to No. 23. Upen must have written from there. Now with reference to all connection of conspirators with No. 23 we must remember that Abinash also lived there, so the visit of persons there as well as the addressing of letters there are always open to the explanation that Abinash was the attraction or the intermediary. It is quite possible that at the time of writing, some time in April, Upen had given this address not writing that letters should be brought to the garden. At any rate in Ex. CVI from Ram Chander to Rihisi Kesh we have indications that Ram Chander did not know where Upen was. In their letter there is a reference to Aurobindo, Ram Chander speaks of him as "a simple childlike, saintly soul yet withal burning with a true patriot's passionate enthusiasm, such as I have rarely seen." Then he speaks of Barin and says "He asked him to go over to Bengal and join them to their work." The sentence is open to two constructions : It might refer to Barin and Aurobindo as having a work in which both were interested or it might refer merely to Barin and his party without having any reference to Aurobindo. I have already referred to Ram Chander and the fact that his name and address is also found in the garden in Ex. CXVII.

Ex. 992 I have already referred to, it suggests some connection between Aurobindo and the Midnapur Chattra Bhandar.

Ex. 774 is the letter by accused Sudhir to Upen at Sil's Lodge of 11th March. It is short ; " arrived safe. Sukumer Bahu is expected on the 5th or 6th Chaitra, explained to Bara Karta, according to his order I ask you to come." In the postscript there is the reference to monkeys. It is suggested that Snkumar Babu is Barin and Bara Karta, Anrobindo. I have already pointed out in connection with Ex. C. L. and with letters being received at the garden, that there is reason to think that Barin was called Snkumar. If by Sukumar in this letter Barin is meant we have the fact that in two letters, this and Ex. 325-2 Karta is mentioned in conjunction with Barin.

It is argued that Bara Karta cannot refer to Aurobindo because if Sudhir had seen him the unopened letter Ex. 300-21 would have been handed over by Aurobindo to Sudhir instead of being carried about from November to May. But Mr. Dass's own argument in connection with this letter was that Aurobindo was absent minded.

I now come to documents of other classes said to affect Aurobindo.

Ex. 1099 is a document found at the search of the "Bande Mataram" office in July 1907.

It is Counsel's opinion on the question as to what would be the position of the share holders in case a prosecution were instituted against the paper of sedition. It is argued that this shows that the publication of seditious matter was contemplated. Now no seditious matter published subsequent to their opinion has been shown to me in the "Bande Mataram" and that is curious if the document indicates an intention to publish such, for counsel's opinion favoured the view that fine was the only penalty that could be imposed on the corporation apart of course from any individual liability of the persons directly responsible.

Ex. 990 is a "Yugantar" Peon Book in which apparently Aurobindo signed for the receipt of two letters. This is worth nothing as evidence. Taken with this is the letter Ex. 992 one

Exs. 311-3 and 4 receipts for the rent of No. 23 were found at No. 48. There is nothing surprising in this : Abinash living in the "Navasakti" office at the time of the arrest. The receipts don't prove connection with the "Navasakti" office, though they show connection with Abinash.

Ex. 315-7 is a receipt for the whole of the premises No. 48 for *Falgun*, the rest being paid by Satayranjan, the son of Monoranjan. It is argued that as there was no division of the premises then there was none when Abinash went to live there. We don't know in what terms the house was occupied when Arabindo and Abinash lived there, but from the fact the previous owner of the Navasakti occupied the inner portion of the premises. We cannot assure that the person who later occupied that portion was in fact included in the Navasakti.

Ex. 311-2 suggests that Arabindo was connected with the Navasakti. There is a set of rules presiding that the Navasakti is to be managed by a committee which Arabindo is to nominate. It may be that Monoranjan was trying to convert the paper into a company and was putting this forth as one attraction. But the importance of this Exhibit so far as regards Arabindo lies in the supposition that the Navasakti was a revolutionary paper. No doubt there was a good prospect of its becoming so when it fell into the hands of Abinash, but we do not know when this scheme was drawn up. That half the income was to be used for the country—a provision which gives food for reflection in view of the similar though liberal provision made in the Chattri Bhandar.

Ex. found in Arabindo's room is a list of articles for physical exercises, a book by name, Human Bullet, was presented to Arabinda by a brother nationalist in appreciation of his work for nationalism in India. It is dated Tokyo, 10th April 1903. The book was found at the Bande Mataram Office. How far the views of the persons not shown to be conspirators as to the nature of Arabindo's work can be taken against Arabindo is open to question. It is not shown whether there is anything of a violent nature in the book beyond the title, and the first picture which

shows a bursting shell,—in connection with a conspiracy of course anything connected with war is looked unnaturally with suspicion—but in Ex. CXXIII we find a short appreciation of this work: "it is a wonderful revelation of the Japanese point of view, in regard to patriotism, obedience, the fellowship with those in a subordinate position and magnanimity towards captured enemies. The horror of debauchery is curiously mingled with purpose and dignity of mind." Such a book in this case is calculated to bear a somewhat sinister aspect in view of the constant reference in proper connection with the conspiracy to Japan and her successor against the Russians; the moral being success of the East against the West.

Possibly a most dangerous piece of evidence against Arabindo that comes under his head is to be found in Ex. 239 in the entries under 12th Jan. and onward. We find 3 which may refer to Arabindo. They are "J. B. to be informed of A. C.'s movements, A. C.'s ruler to be got out of him. Dr. Diradu to be kept in the garden and Ullas and A. G. and B. G. informed." If A. G. refer to Arabinda this is a most damaging piece of evidence. The defence says it is not proved. The only person who could and was willing to speak, is Narendra Gossain. He is dead. The other persons to be informed are Ullas and B. G. Evidently the prominent persons are to be informed and we have no knowledge of any other prominent persons suggested, who bears those initials. In conjunction with B. G. they are significant.

It is suggested that if A. G. means Arabindo, Barin may have told him they had religious organization for the purpose of concealing facts from Arabindo. That might explain the 2nd entry, but what of the other two?

It is conceded that Arabindo finally came to Calcutta from Baroda about the middle of 1908. His arrival was followed at a short interval by the starting of the scheme for National Education, and by the formation of the Chattra Bhandar and Bande Mataram Companies. Arabindo admits that he was concerned in starting the latter company, in fact he was for a short time managing director, but he does not admit connection with the Chattrā

Bhandar. In this company Suresh was doubtless largely interested and a good deal of the case against Arabindo rest on his connection with Subodh. Arabindo's connection with the Chattra Bhandar ostensibly go beyond the signing of his name as witness to the signatures of the promoters on the memorandum of association. Nor is there any evidence beyond his intimacy with Subodh to suggest connection with the Chattra Bhandar. Palit's account is that the promoters went to Subodh's house to have their signatures as witnesses as he was a big man and his name might attract people, and as Arabindo happened to be there he also signed. So far as Arabindo is concerned this explanation may be perfectly true. A good deal of the suspicion which attracts to his signature is due to the fact that Pabitra is so anxious to conceal his knowledge of this institution and that Subodh so shortly after having apparently no interest in it beyond that of a mere witness because so large a shareholder.

Arabindo's association with Subodh is capable of a perfectly innocent explanation. He was much interested in National Education, a scheme in which the prosecution admits there was nothing of itself harmful, and we find that Subodh contributed Rs. 1,00,000 to the establishment of the National College.

Arabindo's connection with the garden is sought to be established by the fact that persons from the garden frequently visited No. 23. That Sailendra was more than a mere casual visitor, we have evidence of it in the post card, Exhibit No. 305-4 which was readdressed to him at No. 23 from 48 Grey St. I have already pointed out that visits to 23 of conspirators may be explained by the fact that Abinash was living there.

A good deal is made of the incident of the 18th April when it is said that shortly after Darin and Abinash left No. 23 Arabindo was seen to open the window. The incident is of very little importance in itself, but it gave rise to much cross-examination. It intended to show that Arabindo was not in Calcutta on the 18th having left for Kishorgunge on the previous day. And in due course two of the prosecution witnesses came forward to prove the alibi. I am not disposed to accept the evidence on this point

of either of these witnesses one was at Kishorgunge just long enough to see Arabindo on his arrival, he fixes the date by the fact that he reached the place on Friday, he fixes his recollections of the fact that it was Friday, by the fact that the day before was Thursday but he can fix nothing more. There is a small piece of evidence which to some extent supports the theory that Arabinda was absent on the 18th. A postal peon who came to deliver a money order did not find him at home till the 3rd day. This does not prove that he was absent from Calcutta and it is unnecessary to pursue the subject further.

A piece of evidence to the effect that he was directly connected with one of the centres of conspiracy is the statement of a postman, witness No. 114, that he saw Arabindo at No. 15. He also identified Narendra Bakshi as seen there, though in the Magistrate's Court he identified Kirshna Jiban. These two are somewhat alike. But I do not believe that he saw Arabindo there. It is impossible that a man so closely watched as Arabindo could have visited a place so closely watched No. 15, without detection.

I now come to deal with what are the really important documents as against Arabinda. Most important of all is Ex. 295, which is known as the "sweets" letter, it purports to have been written on 27th December 1907, the second day of the Congress, and runs as follows "Dear brother, now is the time. Please try and make them meet for our conference. We must have sweets all over India ready made for emergencies (sic), I wait for your answer. Your affectionate Barindra K. Ghose." This was found in Arabinda's room, an envelope was also found with "A. Ghose confidential," written on it apparently on Barin's writing. The defence say the letter is a forgery it is a splendid specimen of the forger's art. The suggestion of the prosecution is that "sweets" means bombs. The term would be a not unnatural one to use and in view of Ex. CL in which apparently Mr. Kingsford is spoken of as the bridegroom and the accounts in Ex. 239 in which under the heading "marriage expenditure" is the item" (Risi) Rs. 52 "that being abbreviation in the vernacular

important nature. The item is amplified by a description of them. There is nothing dishonest in this yet if the next item is written down before the addition is made we get charges of dishonesty of all kinds. Probably in the stress of cross-examination the police officer may betray the true explanation and guess. In this instance nothing is gained. The findings at the garden were quite sufficient without the necessity of adding these books on modern weapon. The prosecution could have served their case much better by putting them somewhere else. Similarly because some of the list is neither on black paper and not on printed forms we get similar suggestion ignoring the perfectly reasonable explanation that the supply of printed forms was exhausted.

Much stress is laid on the difference in the evidence of Superintendent Creagan and Inspector Radha Gobinda Kunda and Benode Gupta in regard to the examination of documents from 48, Grey Street as affecting the "sweets letter." The examination was conducted by Mr. Denham at 25, Royd Street, and some, including the letter in question, were examined and taken by him to his house. He says, he was present at the examination of the documents that day.

Radha Gobinda says that the persons present at the examination were Mr. Gupta and himself, no one else was ever present. The documents were brought bundle by bundle from Park Street and taken back after examination.

Gupta's evidence is confusing. He first speaks of Creagan having brought the documents on the 4th and 5th, then after being questioned about the examination of them, he says "I kept the documents from 48, Grey Street after they came to Royd Street in my custody." Later he speaks of returning documents to Creagan for prosecution in Court. In cross-examination on the first day he said, "It would not be true to my knowledge to say that Creagan kept all the documents found at No. 48 till the 11th May in his house." I don't think it is correct to say that he brought them to Royd Street on the 11th May and some were examined and taken back to his house. On the second day of cross-examination he stated that Creagan took back

the documents which were examined on the first day, and said he never had charge on any of them before that day.

Reading his evidence-in-chief one would naturally imagine that he had had charge of the documents from the 4th or 5th till they were returned to Creagan finally for production before the Magistrate. It is to be noticed, however, that he does not specifically say where they were between the 4th or 5th and the day they were first examined, nor was he asked, with regard to the statements in cross-examination on the first day. The first impression is that he was giving a different version from Creagan. I think the key to the difference lies in the introduction of the date 11th May. He is first asked whether it is correct that Creagan kept the documents in his house till the 11th May, he says no. The next question is one of Mr. Dass's portmanteau question involving 3 points of facts—(1) whether Creagan brought documents on 11th May, (2) whether same were examined, (3) whether those examined were taken back. The witness says no. Now it is quite obvious that to him the gist of the question lay in the date following as it did the previous questions. In fact it appears that Gupta speaking from memory thought the documents were examined before the 10th and having that impression in his mind a wrong one as it happens he naturally answered both the questions put to him in the negative. But the argument that is built on it ignores the fact that he thought the date given was wrong and is based on that portion of the question which was not prominent in the witness's mind. Read in this light his answers on the next day of cross-examination are not inconsistent.

Radha Gobinda had evidently not a very clear idea of what he was telling about, when he says that no one was present but the three persons named at the examination. He evidently means throughout. The point which the defence wants to make from his answers is that the documents were brought from Park Street to Royd Street for examination. The point is achieved by putting indefinite questions. He is first asked about the general procedure in dealing with the findings at searches and says that documents were carried backwards and framed between Park Street and

Royd Street. Then he is asked some questions about the "sweets" letter. There he again begins to speak generally as is evident from this sentence. After the examination was over the bundle was returned and it was sent back to *where it came from*, namely, Park Street and again an argument for a special occasion is founded on a statement of a general nature.

Mr. Denham's evidence makes it clear that the paper were brought by Creagan and that the bundle in which this letter was examined on the 11th May, the first day on which he examined document from 48, Grey Street. And this taken with Creagan's evidence makes it clear that Creagan all along had the documents examined on the day including sweets letter in his possession; and that it was found in No. 48 is clear from the fact, that Creagan initialled it at the time. He does not remember the letter on the 2nd May, but it has his initials, he initialled nothing except at the time of the search, and the search witnesses all signed and one has added the date, and Creagan says that the rule was for them to initial a document before he did.

It is suggested that the document is a forgery and it is argued that Sarat Dass is a forger. In fact Sarat Dass denies that he is a forger: for the purposes of the argument it is not a matter of much moment whether he is or not from his previous history. Whether a forger himself or not he doubtless would have no difficulty in getting hold of one. But to my mind the letter could not have been written to Aurobindo by Barin. I don't take account of the argument that if both were at the same place one would probably not write to the other or that the other would not have preserved that letter; explanations can easily be found for both these points. But I judge from the internal evidence of the letter, Barin is the youngest of 5 brothers. The assessors say that in such a case Barin could not have addressed Arabinda by "Dear brother" that expression could only mean the eldest brother; if meant for Arabinda it would have been Dear, Sejda. That is a point on which I cannot question these opinions. But speaking for myself I cannot understand and Barin signing his name in full if writing to Aurobindo. In letter between Aurobindo and

other relations Barin spoken of as Barin. The brothers were on friendly terms, they must have been if the prosecution theory is to be accepted and it is highly improbable that Barin would sign in this way to Aurobindo. He might write to some one else and use the phrase "dear brother" corresponding to the use of the word "bhai" in the vernacular. In such a case if it was intended to reach Aurobindo. The question suggests itself, if both brothers were at Surat why did not Barin went to Aurobindo direct. That the word "emergency" is "spelt imergancis" is nothing, for in Ex. 569 Barin spells "philosophy" as "phylosophy." Through them I find that the document was in fact in Aurobindo's house on the 2nd May, it is of so suspicious a character that I hesitate to accept it. Experience tells us that in cases when spies are employed documents do find their way into the houses of suspected persons in a manner which cannot be explained by the accused.

Another important document found in Aurobindo's house is Ex. 299-7. That is a page of scribbling in a note book, with incoherent rambling. In it there are references to Bhababhusan, Khoka, Barin, Sushir, Prasulla. It speaks of failures and suggests that there will success next time if the writer is present instead of trying to tride himself; and of a small change of the stuff."

The prosecution suggests that there are the ramblings of a visionary commencing with himself and letting his hand run idly over the paper, trying to pluck up courage to make some attempt on person, disappointed at the ill-success which had attended the attempt by other conspirators. It is pointed out that the names are all names of persons connected with the conspiracy or found in document relating to it. And it is argued that it could not be a forgery as Bhaba Bhusan's name was not known before.

In regard to this last point it must be noticed that Ex. 1089, a letter by Bhababhusan, was found so far back as August 1907.

The other argument the defence does not answer, in fact it is a very difficult argument to answer depending as it does on supposition. It is, however, pointed out that the book is a very old one not one likely to come to Aurobindo's hand if the set down scribble

in an aimless way. The scribbling bear no resemblance to his writing. It is formless and such as any one might write.

Aurobindo says the scribbling was not in the book while in his possession. The suggestion is that it was forged later. There is no reason to suppose that it was. The documents were in the custody of the District Magistrate's Court office from the date of filing. This note book was filed on the 20th May. It could not have been forged before that or the Magistrate's attention would have been called to it at an early date, therefore if forged it must have been done while the books were in his Court. There is no reason to suppose that any person likely to forge it had access to the books. The scribbling was not discovered till August by Mr. Denham, but that is not a matter of surprise considering the mass of documents to be examined. This would naturally escape notice, being in an old book and apparently nothing of importance unless closely examined. On the other hand if Ex. 295 was inserted among Aurobindo's paper before the 2nd May this book may in the same way have been abstracted and replaced there. Again the long delay in discovering it suggests that it was not made for a particular purpose.

I look upon this piece of evidence as the most difficult point in this case.

Ex. 300-21 was found in Aurobindo's house in an open envelope, addressed to Sudhir Kumar Sircar, c/o late Raj Narain Bose, Esqr., Baidyanath, Deoghar, and on the cover of the envelope is written "Confidential." The envelope bears the Baidyanath postmark of 24th November. It was opened by Mr. Denham on 11th May. The point of this is to prove that Aurobindo knew Sudhir, the accused. Sudhir says that he stayed at Deoghar for 2 or 3 weeks after the Pujas and that in March he put up at Raj Narain Bose's house. We know that Aurobindo was at Deoghar in November. It does not follow that the two were there at the same time. On the contrary the fact that the letter was not delivered to Sudhir at Deoghar suggests that he was not there when the letter arrived. In para 17 of his written statement Aurobindo gives an explanation as to how Sudhir stayed

for a short time at Deoghar. He said he does not remember even receiving the letter. There are two possible explanations for this letter being in Aurobindo's possession ; one, that he took it expecting to see Sudhir and to give it to him, the other that he took it accidentally among his papers. In the present case one would naturally expect Aurobindo to give the letter to Sudhir when he saw him. But his counsel says that Aurobindo is absent-minded. That might explain why Aurobindo did not give him the letter. It might also explain its accidentally coming to be among the paper and being overlooked. The contents of the letter do not affect Aurobindo in any way.

There is one more important letter by which it is sought to connect Aurobindo with the garden. This is Ex. 1128, a letter from Birendra Chandra Sen to Aurobindo saying that the writer's father is ill and wants to see Sushil and mentioning that some money is being sent. The letter states that as Biren does not know Aurobindo's Calcutta address he is addressing the letter to Baidyanath. Aurobindo says he never received the letter. He says that he only knew some of the accused whom he names before his arrest. Sushil is not one of them. This letter was written from Baniachong on the 26th April, 1908. It was found in the garden.

Ex. 705 is a money order for Rs. 8 payable to Aurobindo Ghose. It is addressed to the home of the late Raj Narain Bose, Baidyanath, Deoghar. It was re-addressed to 23, Scott's Lane then to 6, College Square. The receipt was signed by Sarojini Ghose on the 8th May. The money order bear the Harrison Road stamp, dated 5th May and the Howbazar stamp, 6th May. This is money order No 240 for which the Post Office receipt given at the time of sending to the sender was found in the house of the Sen's.

The prosecution suggests that the money order represents the money which the letter says is being sent. The defence suggests that it can't be because of the difference in date, while the letter says "money is being sent." The experience might apply to money which was about to be sent just as well as to money actually despatched. It is not really material whether the letter refers to the

letter from Sylhet would go through Calcutta to get to Baidyanath there would be time for the letter to be redirected and reach Calcutta before the 2nd. To my mind the prosecution attaches unnecessary importance to the finding of this letter in the garden. It is out of the question that Aurobindo took it there himself, for if he had gone there some one is sure to have seen him journeying, and if he gave it to some one else to show to Sushil it does not follow that he expected Sushil to be found in the garden.

What then are the chief points against Aurobindo. In the letters we have the ambiguous references to the movement requiring unlimited money, and Abinash no longer doing Aurobindo's work. As regards association with persons we have the fact that he was a friend of Subodh, that he was acquainted with Lele and Ram Chandra Prabhu, that he employed, for the purpose of looking after his house, Abinash, who is a conspirator, the possibility that he knew Upen and Birkumar, a name appearing in the garden, because a letter comes for the first to No. 23 and a telegram from some one given the name Birkumar goes for the second from No. 23, the possibility that he knew Hrishakesh by the finding in the letting house of the slip with the address 16-3, Choku Khansamas Lane, and the probability that he knew Biren Sen and Sushil and the whereabouts of the latter at the end of April. As regards connection with association we have the suggestion that he was connected with Mudoapur Chhatra Bhandar arising out of the reference to him in the letter of Manik to Akhil. As regards association with the garden we have the fact that he was part owner of the garden, but no evidence that he even went there. It was argued that he did not attempt to sell it as he wanted it to be kept for the purpose of the conspiracy. He says that he asked people to try to sell it, and so far as one can gather from his letters and writings personal attention to business is not what one would expect from him. There is the further fact that three entries with the initials A. K. were found in the garden exhibit 259 and that the draft telegram which may be his was found in a book in the finding of Ex. 385, a letter which was not addressed to him. And as regards knowledge of the

conspiracy there is this letter 385-2 and Ex. 774 and they only connect him with the conspiracy if it be clearly established that he is the Karta referred to. In the case of the first letter I have pointed out that there is reason to think he is the Karta because of the mention of Barin at No. 23. But it is not clear who was the writer or who the addressee addressed, and its connection with the conspiracy can only be assumed from the fact of its being found at No. 15 and the mention of Barin. The other contains direct reference to a garden and being addressed to Upen at Sil's Lodge, doubtless his connection with the conspiracy. And further as regards knowledge of the conspiracy, there is the piece of scribbling found in the old note book in his house.

I should hesitate before saying that his complicity in the conspiracy can be considered as established on these facts. In his favour we have the fact that he has in the columns of the *Bande Mataram* deprecated Violence, there is such an article dated 28th May, 1907. And so late as 10th April, 1908, there is an article saying that the natural movement cannot be allowed to be driven inward and made an affair of a secret society as it would if outward expression were stopped. His connection with the conspiracy can only be considered established if we find that while writing one thing he has been doing another.

Of course it is possible that a man might join a conspiracy to deprive the King of the sovereignty of British India, in which his share would be to preach discontent with the existing order of things and that he might be entirely ignorant of that branch of the conspiracy which commenced the collection of arms and ammunition. It is possible that Aurobindo may have been in that position in this case, but in such a case it must be clearly shown that his preachings were part of such a conspiracy, and in the present case it would be difficult to do that without showing some connection with the part which the garden plays in the case. Considering the circumstances of India it may be dangerous for a man to publish doctrines inconsistent with the existing order of things, in certain circumstances it might justify a charge of sedition. Whether such a charge could be laid at Aurobindo's

door does not now concern me. The point is whether his writings and speeches, which in themselves seem to advocate nothing more than the regeneration of his country, taken with the facts proved against him in this case, are sufficient to show that he was a member of the conspiracy. And taking all the evidence together, I am of opinion that it falls short of such proof as would justify one in finding him guilty of so serious a charge.

In dealing with this case generally, I have endeavoured to work on broad lines rather than to elaborate petty details, which would have confused the real issue in a judgment which has already grown to excessive length. I have not, in dealing with Arabindo's case, referred to the Midnapore incident, nor to his connection with the fund for the support of Basanta's family, during Basanta's imprisonment, for these do not affect the main issue. One word with reference to his connection with the meeting to welcome Bepin Chandra Pal on his release from jail. Whether his views agree with Bepin's or not, there is nothing calling for comment in the fact that he joined in welcoming a man imprisoned for refusing to give evidence in a case in which Arabindo was the accused.

A few words as to the opinion of the Assessors. One of them speaks of this conspiracy as a "childish conspiracy." He seems to have utterly failed to realise the significance and danger of it or the extent to which it had spread. The Assessors evidently dislike the idea of a conspiracy; while both find that certain persons collected arms in circumstances which amount to an offence under section 122; one of them thinks that the collections were made by persons independently of each other. In fact, the offence under section 122 is more serious than that under section 121A, involving, as it does, forfeiture of all offender's property as a compulsory sentence.

As to the application of section 121. Reading section

121A with the second clause of section 107, I. P. C., it is clear that a conspiracy to wage war becomes an offence under section 121 if any act is done in pursuance of the conspiracy, and in order to the carrying out of the purposes of the conspiracy. And explanation 5 of section 108 further elucidates the second clause of section 107.

The overt acts by which it is sought to convert the offence under section 121A to the offence under section 121 are the three attempts on the Lieutenant-Governor and the Muzaffarpur outrage, which was an attempt on the life of Mr. Kingsford. Mr. Dass contends that as section 124 provides for a criminal attempt made on a Lieutenant-Governor for the purpose of compelling him to exercise or refrain from exercising any of his powers, it could not be intended that such should also amount to an offence under section 121. He admits that criminal force to a Lieutenant-Governor will amount to an offence under section 121, but only if the act of force is in itself an act of war, and he relies on a passage from Collet's comments on the Indian Penal Code: "We conceive that the last words (*i.e.*, of section 121A) do not go beyond the scope of section 121." He also contends that English cases do not help the consideration of this case, because while under the English statute of treason, all the offences mentioned in sections 121-123 are included in the term "levying war," the Penal Code has made separate provisions for each branch of the subject, and section 121 is unambiguous in its terms, and waging war means the actual formation of battle array and fighting. This argument involves a *petitio principii*: we cannot seek the help of English cases to show what levying war means because waging war under section 121 has the meaning which he claims for it.

I take section 121A to be an amplification of what is meant by waging war in section 121. But to say that the

offence of waging war is only completed with the formation of battle array and the commencement of hostilities is to claim a meaning for those words which, to my mind, is far too narrow. It might have been a correct interpretation in the Middle Ages, but, as was pointed out by the Judges in the case of *Rex v. Gallaher*, the resources of modern science are such that that can now be done by a few, which originally could only be done by an army. In that case there was an attempt to blow up the Houses of Parliament. An attempt to blow up a Lieutenant Governor for following a certain line of policy is just as much an act of war as an attempt to blow up Parliament. The attempts on Sir Andrew Fraser were due not to one single official act of his, but were an attack on a policy, the object of which was to stop revolutionary writing in the Press, and the attempts were made to defend one of the methods by which the conspirators sought to encompass their ends. Any attempt on the King's Ministers to compel or prevent a certain line of policy or form of government is an attempt on the sovereignty of the King and, as such, amounts to a waging of war.

The fact that section 124 makes a criminal attempt on a Lieutenant-Governor a particular offence does not militate against this view. That section would meet the case of an attempt by an individual not a member of, or in pursuance of, a conspiracy, or of an attempt made to compel or restrain the exercise of his powers in some individual case as distinct from a particular policy. And thus overawing of certain high officials, which amounts to a State offence, finds its counterpart in section 189 in the case of minor officials.

The attempt, however, on Mr. Kingsford stands on a different footing. It is true that Mr. Kingsford had earned the hatred of the conspirators for his convicting some of the

persons instrumental in spreading revolutionary ideas, and their conviction was a blow to the methods of the conspirators. But here there is no question of a line of policy pursued by one of the King's Ministers. His acts convicting the accused were individual acts of a judicial nature. At the time of the attempt he had ceased to be Chief Presidency Magistrate, so was no longer in a position to check the work of the conspiracy by sentencing those who preached revolution. In his case the act looks more like an act of revenge than one in furtherance of the conspiracy. There is another point of view that might be taken. It might be said that as an act of terrorism it was in pursuance of the conspiracy. But to convert a conspiracy into an abetment the overt act must be not only in pursuance of the conspiracy but in order to the doing of the thing, i.e., in their case to the doing of one of the things mentioned in section 121A. Then, if it is to apply to any, it must clearly be to the first act contemplated in section 121A, i.e., to commit one of the offences under section 121. It cannot be said that to kill Mr. Kingsford was in order to the waging of war. I am therefore of opinion that the attempt on Mr. Kingsford was not such as to convert the conspiracy into an abetment of waging war.

It follows then that while all of the persons whom I have found to be members of the conspiracy are guilty under section 121A, only those will be guilty under section 121 who joined the conspiracy before the 5th December, the last day on which an attempt was made on the Lieutenant Governor. And those the evidence that I have already set out shows to be Barén, Upen, Ulaskar, Bibhuti, Hrishikesh, Biren Sen (the date in the book of the explosive fixes it in his case), Sudhir, Indra Nath, Abinash, Sailendra and Hem Chandra Dass. The absence of the last named from India till the beginning of 1908 seems to suggest that he could not have

under section 121A:—Indu Bhusan Ray, Poresb Chandra Maulik, Sishir Kumar Ghose, Krishna Jiban Sanyal, Asok Chandra Nandi, Bal Krishna Hari Kane, Sushil Kumar Sen, Nirapada Ray; and the following guilty under section 122:—Nirapada Roy, Birendra Ghandra Sen. Sudhir Kumar Sarkar, Indra Nath Nandi and Sailendra Nath Bose. Agreeing with both Assessors, I find the following not guilty under section 121:—Indu Bhusan, Poresb, Sishir, Krishna Jiban, Nirapada, Asok, Kane, Sushil; and the following not guilty under section 122:—Krishna Jiban, Asok, Kane, Sushil, Abinash.

Agreeing with both, I find Naren Bakshi, Sailendra Kumar Sen, Nalini Kanta Gupta, Purna Chandra Sen, Bijoy Kumar Nag, Kunja Lall Shaha, Hemendra Nath Ghosé, Dharini Nath Gupta, Nagendra Nath Gupta, Birendra Nath Ghose, Bijoy Bhattacharji, Hem Chandra Sen, Probhash Chandra De, Dindoyal Bose, Nikhileswar Roy Maulik, Deba Brata Bose, Arabindo Ghose not guilty under sections 121, 121A and 122; and all accused persons not guilty under section 123.

I should here deal with some legal objections taken to the jurisdiction of the Court to try the accused. First, Mr. Dass argued that the accused had a right to be tried by Jury, and that the Criminal Procedure Code, so far as it provides for trials with the aid of Assessors, is *ultra vires*. I declined to hear Mr. Dass, as an exactly similar point was raised a short time ago before the Special Bench of the High Court and rejected.

The next point was that Mr. Birley had no jurisdiction to commit the case, and that the only Magistrate having jurisdiction was the Chief Presidency Magistrate. A similar point was raised at the beginning of the hearing, but in the arguments at the end an additional point was taken, which was not taken at the beginning, as it should have been, for it might have made a very great difference, viz., that

objection was taken to Mr. Birley's jurisdiction when he first began the inquiry ; for if objection was taken, the section 532, C. P. C., would not cure the defect. But I do not see how the fact that Mr. Thornbill issued search warrants can affect Mr. Birley's jurisdiction : Mr. Birley could only take cognisance on complaint made under section 196, C. P. C., and when the sanction of Government was given the complaint was made to Mr. Birley who had local jurisdiction.

Then it was contended that the trial was bad for misjoinder. First it was argued that the accused were being tried for more than three offences of the same kind, the argument being based on the ground that the prosecution sought to convert the conspiracy into an abetment of waging war, or into actual waging of war, by alleging four overt acts, viz, three attempts on the Lieutenant-Governor and one on Mr. Kingsford. It was argued that the allegation of four overt acts amounted to four separate charges, and the well-known case of Subramania Aiyar was referred to. In that case there was a charge of conspiracy to commit fraud, and more than three separate acts of fraud were included in the charge. As conspiracy is not a criminal offence in India, except when the conspiracy is the one contemplated in section 121A that charge had to go out, and the practical effect was that the accused was tried at one trial for more than three separate acts of fraud. Here the case is different. However many overt acts a man may commit, they only amount to one of waging of war. Each by itself might be sufficient to bring him within the section, but all combined would amount to only one waging of war. To take an example. Suppose a body of insurgents marched from Patna to Calcutta, and on the way fought four engagements at intervals of several days. Though they might be tried and convicted of waging war on the facts of any one engagement by itself, yet the effect of

being concerned in four engagements would still be only one waging of war. The four engagements would severally be different acts in the same offence. And, I take it, the *ratio decidendi* is that the four engagements would really be part of the same transaction. When we talk of one transaction as applied to the offence of waging war or conspiracy to wage war, it is clear in the very nature of things that the word must have a wide meaning. In fact, when the conspiracy was once formed, any act done in furtherance of it might, properly speaking, be said to be part of the same transaction. And so far that comes within the definition which the Bombay High Court has put on the word 'transaction', "continuity of purpose and continuity of action." It is continuity of action, for when a conspiracy has once been formed the act of conspiracy goes on till the conspiracy is dissolved, though there may be many intervals during which the conspirators are not actively engaged. And this shows 239, C. P. C., is applicable to this case; for it was argued that there was also a misjoinder of persons.

In connection with this argument a Bombay case was referred to in which certain police officers had committed distinct acts of extortion while engaged in the same enquiry. It was decided that they could not be tried together. Mr. Dass argues that this case is in his favour, because the police officers were actually engaged in the same transaction, viz, the same enquiry. But then the same transaction in that case was not in itself an offence. When section 239 speaks of a transaction, it obviously means such a transaction as is an offence in itself. In the Bombay case there was no connection between one act of extortion and another.

But, says Mr. Dass, let us leave out of consideration the charge under section 121A, and then we shall see that there is misjoinder in respect of persons and charges. But we cannot

leave out the charge under section 121A. The conspiracy is the very foundation of the case, and it is the fact of the conspiracy which brings the various accused persons together. No doubt a person cannot be convicted for both committing an offence and for concealing the offence which he commits. And on the strength of that fact it is argued that charges under section 121 and section 123 cannot be joined. Section 123 doubtless contemplates the concealment by a person, not a member of the conspiracy of the design entertained by others to wage war. What the prosecution says is 'we can prove certain facts, and on those facts it is for the Court to decide whether the person implicated can be held to be a member of the conspiracy or merely to have had a knowledge of the design and concealed it'. And in this case, which is provided for by section 236, C. P. C., if there were no charge but the charge under section 123, clearly only one person could be tried at a time; for the concealment of his knowledge by A is a separate offence from the concealment of his knowledge by B. But if A and B are being jointly tried for conspiracy, it is clear that an alternative charge of concealing his knowledge under section 123 can be added against either: in case the facts proved are insufficient to establish his complicity in the conspiracy, and as the charge can be added against either, it can be added against both.

It appears, then, that there is misjoinder neither of persons nor of charges. I omitted to mention one point raised in connection with Mr. Birley's jurisdiction. It was that he had begun the enquiry before the sanction of Government was received. On this it was argued that his whole proceeding was without jurisdiction. Now, as soon as sanction was given, he obviously had jurisdiction, and if his record be looked at, it will be seen that on the second day of the enquiry

the evidence given by the first witness, before the sanction was received, was repeated.

It is a matter of satisfaction that I am able to come to the conclusion that the proceeding are not without jurisdiction or the trial bad—not merely because of the immense waste of public time and money which would have taken place, but in the interests of those accused against whom I have found the charges not proved ; for if the trial be bad for misjoinder of persons or charges, we are taken back to the stage at which the persons were committed by Mr. Birley and all would have to be tried again, for there having been no trial, there would have been no acquittal. If Mr. Birley's commitment was without jurisdiction, we are thrown still further back to the stage when the Government sanction was given to complain.

This case has lasted much longer than it ought to have either on account of its importance or the novelty of the charges. For this I think both sides are to blame. The prosecution introduced incidents and numerous documents which really had no bearing on the case. I understand that there had not been time to examine many of the documents, and perhaps it was necessary for purposes of expediency that the trial should begin without delay. On the other side the cross-examination was far more minute than was necessary, and would have been just as effective if reduced by one-third. In a case of conspiracy with extensive ramifications one is bound to give counsel considerable latitude in this respect, and when one does it is a matter for regret that the Court's confidence should be abused.

The case has caused me considerable anxiety on account of its importance, its difficulty, and partly also on account of the circumstances in which it was launched. The tragic circumstances immediately preceding the searches and the

nature of the materials found at those searches have inevitably created a feeling of prejudice in the minds of the public before whom one at least of the accused had for some time been a conspicuous figure. In the attempt to avoid prejudice I may have been led too far in the other direction and under-estimated the effect and value of certain facts, but if I have made this mistake, I have at any rate the consolation of knowing that the mistake is on the right side.

The question of sentence has also caused me much anxiety. Only one of the accused whom I have found guilty is over 30 ; some of them are under 20. For many of them one cannot help being sorry, feeling as one does that they are young and impressionable, and that the persons who ought really to be in the dock are the persons responsible for filling them with the ideas which they entertain—persons who, whether they call themselves Moderates, or whether having the courage of their convictions they call themselves Extremists, are alike in this that they constantly attribute to Government the worst possible motives and vilify its officers regardless of fair criticism ; such persons who hold public meetings in honour of, and exalt as a national hero, a boy who has been whipped for assaulting the police in the execution of their duty.

Those responsible for this conspiracy did their work well ; they realised that their best chance was to get hold of the youth of the country and inflame them by appealing to their sense of religion and their sense of chivalry, and to this end they have prostituted the teaching of their sacred books and represented that under English rule the chastity of their mothers and sisters is not safe.

No Englishman worthy of the name will grudge the Indian the ideal of independence ; no Indian of decent feeling but will deprecate the methods sought to attain it. The danger of a conspiracy such as this lies not so much in its prospect

of success as in its fruition. When once the poison has entered into the system it is impossible to say where it will break out or how far-reaching will be its effects.

The offence under section 121 is the most serious in the Penal Code except that of murder by a life-convict; and the Criminal Procedure Code provides that where a person is convicted of an offence for which the capital sentence is provided as a punishment, reasons must be given if such a sentence is not passed. Where a number of persons are associated in an offence for which a capital sentence is provided, it is the practice of the Courts to differentiate as far as possible between them to avoid the necessity of passing an irrevocable sentence.

Of the 11 persons whom I convict under section 121, there stand out conspicuously Baren, the leader, Ulaskar, the manufacturer of explosives, and Hem Chandra Dass, the other chemist, who is perhaps the most sinister figure in this conspiracy. It is in favour of Baren and Ulaskar that they made confessions: they say it was to save the innocent; and if that were really their object, they deserve full credit for it. On the other hand, the case against them was so strong from their being found in the garden, of which Baren was part-owner, that Baren at any rate had little hope of escape, confession or no confession. Certainly in his case the confession was not prompted by any feeling of remorse: he gloried in what he had done. And neither of them has disclosed the full extent of the conspiracy or the names of other associates, except those arrested with them. Not that this concealment indicates depravity, rather the contrary. In both cases the confessions were withdrawn, but for this their legal advisers are doubtless responsible, for neither of them has denied the truth of his confession. At the same time neither has shown any contrition for the part he played, or for the persistent attempts to

do away with a Lieutenant-Governor of whom the last thing that could be said was that he was unsympathetic. It may be that the Government which the accused have tried to overthrow will adopt a merciful attitude towards these misguided young men, but the Court has a painful duty to perform, to make it clear that attempts to overthrow the sovereign power cannot be made with impunity. I convict Barindra Kumar Ghose and Ulaskar Dutt under section 121 of waging war on the King and sentence them to be hanged by the neck till they are dead and to forfeit all their property. Hem Chandra Dass deserves little mercy, but in his case there is the fact that he was not in India when the actual acts of war were committed. I think, therefore, I may stretch a point in his case, as in the case of Upendranath Banerji, Bibhuti Bhusan Roy, Hrishikesh Kanjilal, Birendra Chandra Sen, Sudhir Kumar Ghose, Indra Nath Nandi, Abinash Chandra Bhattacharji and Sailendra Nath Bose. I convict all these under section 121, Bibhuti of waging war, the rest of abetting in the waging of war, and sentence them to transportation for life and to forfeit all their property. It is unnecessary to pass any separate sentence under the other sections under which I convict these persons.

Indu Bhusan Roy is just as bad as any of the above-named persons : he actually took part in an attempt, though not on a British official. I convict him under sections 121A and 122, and sentence him to transportation for life and to forfeit all his property.

In the case of the rest a distinction may be made, they not being guilty under section 121 nor concerned in any actual attempt on life. I convict Paresh Chandra Maulik, Sishir Kumar Ghose, Nirapada Roy under sections 121A and 122, and sentence them to transportation for ten years and

to forfeit all their property. But for their ages the sentence would be heavier.

The other accused whom I convict are convicted only under 121A. All are under 20, but the offence is serious. I sentence Asoke Chandra Nandi, Bal Krishna Hari Kane, and Sushil Kumar Sen to transportation for seven years. Krishna Jiban Sanyal, who, as I pointed out before, was trying to escape from the conspiracy, may be dealt with leniently on that account, and because of his age—he is only 16—I sentence him to rigorous imprisonment for one year.

I acquit the remaining accused and order them to be set at liberty.

With regard to the boys who have escaped these very serious charges, I would express a hope that their parents or guardians will exercise a more effective control over them than they seem to have done in the past, and not allow them to mix themselves up with matters which they are not fitted to understand.

In conclusion, I must thank Mr. Birley for his really excellent commitment order. I believe that practically without assistance he disentangled the mass of important facts and documents to which he referred in his order from the chaotic state in which they then were, and produced a really first-class piece of work.

The 6th May 1909.

C. P. BEACHCROFT.